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FORMS AND PRECEDENTS.

FORMS AND PRECEDENTS

OF

Proceedings in the Chancery Division of the High Court of Justice,

AND ON APPEAL THEREFROM;

WITH DISSERTATIONS AND NOTES.

FORMING

A COMPLETE GUIDE TO THE PRACTICE OF THE CHANCERY DIVISION OF THE HIGH COURT AND OF THE COURTS OF APPEAL.

BY

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TO

THE RIGHT HONOURABLE

SIR GEORGE JESSEL, KNIGHT,

MASTER OF THE ROLLS,

WHO, BOTH AS A LEGISLATOR AND AS A JUDGE,

HAS CONTRIBUTED IN AN EMINENT DEGREE TO THE ESTABLISHMENT

OF A SIMPLE AND UNIFORM SYSTEM OF PROCEDURE,

This Volume

IS, BY PERMISSION, MOST RESPECTFULLY DEDICATED BY

THE AUTHOR.

PREFACE.

The changes which have taken place in our procedure since the publication of the Second Edition of "Daniell's Forms" have rendered it unadvisable, if not impossible, to issue a mere new edition of that work. The present volume is, therefore, an entirely new work, with the exception of the following parts: Chapter XVI.; Chapter XXI.; Chapter XXIV., sections 1 and 3–5; Chapter XXV.; and Chapter XXXIX., sections 1–3, 5–22, 24, 25. These excepted portions have been carefully re-edited and adapted to the present state of the law and practice.

The author's desire has been to make this volume a working manual of practice—a sort of small Daniell's Practice. With this view he has prefixed dissertations to most of the chapters and sections, and has also appended appropriate notes to the various Forms. These dissertations and notes do not pretend to exhaust the practice of the Courts, but it is believed that they will form a sufficient guide to the practitioner in the conduct of ordinary matters.

The present volume is not confined to the procedure in matters which, by the 34th section of the Judicature Act, 1873, are assigned to the Chancery Division of the High Court, but includes the procedure in all matters which *may* be brought in the Chancery Division, although in practice such matters are usually brought in one of the Common Law Divisions of the Court. It is hoped, therefore, that the utility of the work will not be confined to the Chancery Division, but that it will be found equally useful in the Common Law Divisions.

The author has to acknowledge his obligations to Mr. Leonard Field and Mr. Edward Clennell Dunn, the learned editors of "Daniell's Chancery Practice," by whom the proof sheets have been perused; to Mr. Parkinson, the head of the Chancery Pay Office, by whom the Chapter on "Proceedings in the Chancery Pay Office" has been perused; and to the several officers of the Court for much information as to the practice of their respective offices.

The very full and elaborate Index has been prepared by Mr. John Ashton Cross, B.A., of the Chancery Bar and the Oxford Circuit; and the useful and elaborate analytical tables prefixed to the work have been prepared by Mr. Alexander Macmorran, M.A., of the South-Eastern Circuit, who has also rendered other assistance in the preparation of the work. To both of these gentlemen the author has to express his grateful acknowledgments.

W. H. U.

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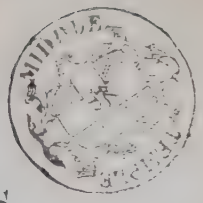

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TABLE OF ADDENDA.

[NOTE.—*This table includes the cases reported in the Law Reports for December*, 1878.]

P. 2, note (*a*). After the words "R. S. C., Ord. XVI., r. 11," in the fourteenth line, add: In order that this rule may apply there must be *numerous* parties to be represented; *Wilson* v. *Church*, 9 Ch. D. 552. And in the thirty-third line, after "R. S. C., Ord. XVI., r. 11," add: *Stace* v. *Gage*, 8 Ch. D. 451.

P. 4, note (*a*). In the twenty-ninth line of the note, after "Ord. XVI., 14," add: The application should, as a general rule, be made by summons at Chambers; *Wilson* v. *Church*, 9 Ch. D. 552. And in the thirty-fifth line, after "eight days," add: A similar course was pursued in *Wilson* v. *Church*, 9 Ch. D. 552.

P. 5, note (*b*). At the end of the note, add: The application should, in general, be made by summons at Chambers; *Wilson* v. *Church*, 9 Ch. D. 552.

P. 8. In the twentieth line, after "Dan. Pr. 1392, 1393," add: As to the cases in which a cause of action does survive, see *Twycross* v. *Grant*, 27 W. R. 87 (C. A.).

P. 9, note (*b*). At the end of the note, add: A plaintiff's successor who obtains an order to carry on the proceedings, thereby adopts the litigation and renders himself liable to the payment of the costs from the commencement of the litigation; *Boynton* v. *Boynton*, 9 Ch. D. 250 (C. A.).

P. 51, note (*a*). After the reference to "Dan. Pr. 149—152" in the thirteenth line, add: and in a foreclosure action, where the equity of redemption was vested in an infant in trust for sale, the judgment directed that, if the mortgagees were not redeemed within six months, the infant should be a trustee for them within the meaning of the Trustee Act, and a person was ordered to convey to the mortgagees on his behalf; no day being given to the infant to show cause; *Foster* v. *Parker*, 8 Ch. D. 147.

P. 81, note (*a*). *Hancocks* v. *Lablache*, 26 W. R. 402, is now reported 3 C. P. D. 197. After "*Hancocks* v. *Lablache*, 26 W. R. 402," add: and see *Atwood* v. *Chichester*, 3 Q. B. D. 722.

P. 82, note (*a*). At the end of the note, add: A married woman defendant who has a separate estate may be condemned in costs; *Morris* v. *Freeman*, 3 P. D. 65.

P. 88, note (*a*). Add: Where the plaintiff, after the Chief Clerk's certificate was prepared, obtained leave to sue *in formâ pauperis*, the certificate was ordered to be delivered out without payment of Court fees; *Thomas* v. *Ellis*, 8 Ch. D. 518.

P. 114, note (*v*). *Stace* v. *Gage* is now reported 8 Ch. D. 451.

P. 125, note (*f*). *Doyle* v. *Kaufmann*, 3 Q. B. D. 7, has been affirmed upon appeal, 3 Q. B. D. 340.

P. 138, note (*d*). After "R. S. C., Ord. IX., r. 2," add: Where an order is made under this rule giving leave to effect substituted service, and service is duly effected according to the order of the Court, such service is, while the order remains undischarged, equivalent for all purposes to actual personal service; *Watt* v. *Barnett*, 3 Q. B. D. 363 (C. A.).

P. 142, note (*r*). After "R. S. C., Ord. XI., r. 1*a* (R. S. C., June, 1876, rule 5)," in the sixth line from the bottom of the page, add: Where an affidavit contained no statement as to the existence of a local Court in Scotland it was held insufficient and leave was refused; *Wood* v. *MacInnes*, 27 W. R. 49.

P. 148, note (*e*). *Smith* v. *Dobbins*, 26 W. R. 59, 122, is now reported 3 Ex. D. 338.

P. 160, note (*a*). In the last line but two, and in the last line, *Attenborough* v. *London and St. Katharine Docks Co.*, 26 W. R. 583, is now reported 3 C. P. D. 450.

P. 164, note (*a*). For the last three lines of the note, beginning, "A defendant," substitute: It has been decided by the Court of Appeal that a defendant may, as a general rule, pay money into Court in respect of a cause of action which at the same time he by his pleadings denies to exist; *Berdan* v. *Greenwood*, 3 Ex. D. 251 (C. A.); which seems to overrule *Spurr* v. *Hall*, 2 Q. B. D. 615.

P. 168, note (*b*). At the end of the note, after "*Bower* v. *Hartley*, 1 Q. B. D. 652," add: *Associated Home Company* v. *Whichcord*, 8 Ch. D. 457.

P. 207, note (*a*). *Watt* v. *Barnett*, 3 Q. B. D. 183, has been affirmed on appeal; 3 Q. B. D. 363.

P. 207, note (*b*). *Atwood* v. *Chichester* is now reported 3 Q. B. D. 722. *Watt* v. *Barnett*, 3 Q. B. D. 183, has been affirmed on appeal; 3 Q. B. D. 363.

P. 215, note (*t*). After "*Parsons* v. *Tinling*, 2 C. P. D. 119," in the eighth line of the note, add: *Garnett* v. *Bradley*, 2 Exch. D. 349, has been reversed, upon appeal, by the House of Lords; 3 App. Cas. 944; 26 W. R. 698; the decision in *Parsons* v. *Tinling*, 2 C. P. D. 119, is therefore now established to be law. The result is, that the enactments in 21 Jac. 1, c. 16, s. 6, and 3 & 4 Vict. c. 24, s. 2, are repealed by R. S. C., Ord. LV., and the right to costs now depends upon R. S. C., Ord. LV., and the County Courts Act, 1867, s. 5, as modified by the Supreme Court of Judicature Act, 1873, s. 67. Money paid into Court by the defendant and taken out by the plaintiff in satisfaction of his claim, is money recovered within the meaning of the County Courts Act, 1867, s. 5; *Fleming* v. *Manchester, Sheffield, and Lincolnshire Railway Co.*, 26 W. R. 741.

P. 218, note (*b*). After "R. S. C., Ord. XIX., r. 8," in the seventeenth line of the note, add: *Cargill* v. *Bower*, 26 W. R. 716.

P. 220, note (*e*). At the end of the note, add: A specially indorsed writ, coupled with a notice under R. S. C., Ord. XXI., r. 4, is to be treated as a statement of claim for all purposes,

and may, therefore, be demurred to ; *Robertson* v. *Howard*, 3 C. P. D. 280.

P. 255, note (*a*). After the words "R. S. C., Ord. XIX., r. 3," in the twenty-sixth line from the top, add : Under this rule a defendant may set up any number of counterclaims, without any limit as to their number or nature, subject to the power of the Court to exclude them ; *Naylor* v. *Farrer*, 26 W. R. 809. In the twelfth line from the bottom of the page, *Hodson* v. *Mochi*, 26 W. R. 590, is now reported 8 Ch. D. 569. After the words "*Padwick* v. *Scott*, 2 Ch. D. 736," in the sixth line from the bottom of the page, add : *Naylor* v. *Farrer*, 26 W. R. 809. In the fourth line from the foot of the page, *Winterfield* v. *Brudnum*, 26 W. R. 353, 472, is now reported 3 Q. B. D. 324.

P. 256, note (*a*). In the first line, after "R. S. C., Ord. XXII., r. 10," add : See *Horrocks* v. *Rigby*, 26 W. R. 714. In the thirteenth line from the top of the page, *Blake* v. *Appleyard*, 26 W. R. 592, is now reported 3 Exch. D. 195.

P. 266, note (*s*). At the end of the note, add : Where the claim raised by the counterclaim is unconnected with the subject of the plaintiff's claim, and cannot conveniently be disposed of in the pending action, it will be excluded ; *Naylor* v. *Farrer*, 26 W. R. 809. The application is usually made in Court and not in Chambers ; *per* Jessel, M.R., in *Naylor* v. *Farrer*, 26 W. R. 809.

P. 278, note (*a*). In the thirteenth line from the top of the page, *Leyman* v. *Latimer*, 26 W. R. 305, is now reported 3 Ex. D. 352. After the reference to "Dan. Pr. 465—501," in the thirteenth line, add : A defendant may now demur to matter to which he has previously put in some other defence ; *Powell* v. *Jewesbury*, 9 Ch. D. 34. Where the facts appear upon the statement of claim, the defence of the Statute of Limitations may be raised by demurrer ; *Noyes* v. *Crawley*, 27 W. R. 109.

P. 281, note (*b*). At the end of the note, add : And where a defendant obtained leave to amend his statement of defence, it was held that he might deliver a demurrer and amended statement of defence ; *Powell* v. *Jewesbury*, 9 Ch. D. 34.

P. 296, note (*a*). In the twentieth line from the foot of the page, after "*Berdan* v. *Greenwood*, W. N. (1878), 104," add : The Court will give a liberal interpretation to the words "fair trial of the action" in Rule 1 of Ord. XXVII., and will hold that a pleading which tends to prejudice, embarrass, or delay a party at any stage of the proceedings in the action, is a pleading which affects the "fair trial of the action" within the meaning of the rule ; *Berdan* v. *Greenwood*, 3 Exch. D. 251, 256 (C. A.). A defendant does not, in general, prejudice or embarrass the fair trial of the action by paying money into Court at the same time that he denies the existence of the plaintiff's cause of action ; *Berdan* v. *Greenwood*, 3 Ex. D. 251 (C. A.) ; *quære*, if *Spurr* v. *Hall*, 2 Q. B. D. 615, were rightly decided.

P. 313, note (*a*). *Watt* v. *Barnett*, 3 Q. B. D. 183, has been affirmed on appeal ; 3 Q. B. D. 363.

P. 378, note (*a*). At the end of the note, add : Except upon interlocutory applications which do not decide the rights of parties, but are made for the purpose of keeping things in *statu*

quo till the rights can be decided, or for the purpose of obtaining some direction of the Court, affidavits must be confined to such facts as the witness is able of his own knowledge to prove, and must not contain statements as to his information and belief; R. S. C. Ord. XXXVII., 3; *Gilbert* v. *Endean*, 9 Ch. D. 259.

P. 379, note (*d*). At the end of the note, add: An agreement that the evidence in chief shall be taken by affidavit implicates an agreement that the trial shall take place before a Judge without a jury; and, therefore, where such an agreement had been entered into between the parties, the Judge ordered the trial to take place before himself without a jury; *Brooke* v. *Wigg*, 8 Ch. D. 510.

P. 388, note (*g*). In the fifth line of the note, after "Ord. XXXVII., 3," add: It is only upon interlocutory applications which do not decide the rights of the parties, but are merely made for the purpose of keeping things in *statu quo* till the rights can be decided, or for the purpose of obtaining the direction of the Court, that affidavits may contain statements as to the information and belief of the witness; *Gilbert* v. *Endean*, 9 Ch. D. 259.

P. 409, note (*a*). In the nineteenth line from the foot of the page, after "*Sugg* v. *Silber*, 1 Q. B. D. 362," add: *Mirehouse* v. *Barnett*, 26 W. R. 690. After "*Bordier* v. *Burrell*, 5 Ch. D. 512," in the ninth line from the bottom of the page, add: *Mirehouse* v. *Barnett*, 26 W. R. 690. After "*Clements* v. *Norris*, 26 W. R. 94," in the last line of the page, add: *Mirehouse* v. *Barnett*, 26 W. R. 690.

P. 410, note (*a*). After "*Pilley* v. *Baylis*, 5 Ch. D. 241," in the seventh line of the note, add: *Brooke* v. *Wigg*, 8 Ch. D. 510 (where the parties had entered into an agreement that the evidence in chief should be taken by affidavit, and a large mass of affidavit evidence had been taken under this agreement); *Mirehouse* v. *Barnett*, 26 W. R. 690 (where the rule was laid down that if there are several defendants, and all do not desire to have the case tried before a jury, the Court will not comply with the request of one, unless it be shown that a trial before a jury will be more convenient). After "*West* v. *White*, *ubi supra*," in the tenth line of the note, add: *Brooke* v. *Wigg*, 8 Ch. D. 510.

P. 418, note (*r*). At the end of the note, add: Where the questions raised by a counterclaim are quite distinct from those raised by the statement of claim, it is generally more convenient to try them separately; *Re Woodfine*, *Thompson* v. *Woodfine*, 26 W. R. 678.

P. 446, note (*a*). At the end of the note, add: Where a new trial is directed, the party who is ultimately successful in the action is entitled to his costs of the first trial as part of his costs of the action; *Creen* v. *Wright*, 2 C. P. D. 354; *Field* v. *Great Northern Railway Co.*, 3 Ex. D. 261.

P. 447, note (*c*). *Burgoine* v. *Taylor*, 26 W. R. 568, is now reported 9 Ch. D. 1.

P. 453, note (*k*). In the sixteenth line of the note after "(R. S. C., December, 1876, r. 7)," add: An application to set aside the verdict or finding of the jury is not an application under R. S. C. Ord. XL., 4, but is an application for a new trial under R. S. C. Ord. XXXIX., 1; *Davies* v. *Felix*,

27 W. R. 108; *Yetts* v. *Foster*, 3 C. P. D. 437; and so of an application to set aside a nonsuit at a trial before a judge and jury; *Etty* v. *Wilson*, 3 Ex. D. 359.

P. 497, note (*a*). After the reference in the seventh line from the foot of the page to "Seton, ed. 4, pp. 60, 61," add: Every order made in Chambers, may be set aside or discharged upon notice by the Judge sitting in Court; Supreme Court of Judicature Act 1873 (36 & 37 Vic. c. 66), s. 50; a motion made under this section to discharge an order in Chambers should, by analogy to R. S. C., Ord. LVIII., r. 15, be made within twenty-one days after the hearing in Chambers; *Dickson* v. *Harrison*, 9 Ch. D. 243.

P. 566, note (*z*). At the end of the note, add: An accounting party will not be permitted to surcharge and falsify his account merely because the other party has liberty to surcharge and falsify; *Mozley* v. *Cowie*, 26 W. R. 854; overruling the dictum in 1 Madd. Ch. Pr. 144, cited 1 Dan. Pr. 577.

P. 568, note (*i*). *London Syndicate, Limited* v. *Lord*, 26 W. R. 427, is now reported 8 Ch. D. 84. After "*London Syndicate, Limited* v. *Lord*, 26 W. R. 427," add: and *Freeman* v. *Cox*, 8 Ch. D. 148.

P. 583, note (*g*). Add: The Chief Clerks have recently determined not to require the signature by the intended lessee of the contract to be proved; the last paragraph of this form is, therefore, unnecessary.

P. 642, note (*i*). Add: The Chief Clerks have recently determined not to require this affidavit.

P. 679, note (*n*). At the end of the note, add: It has recently been determined by the Chief Clerks that, under ordinary circumstances, a summons to settle the certificate is unnecessary.

P. 689. After the words "s. 25, subs. 11," in the third line from the bottom of the page, add: But in *Kipling* v. *Todd*, 3 C. P. D. 350, writs of *scire facias* were issued against the shareholders of a company whose special Act incorporated the 8 & 9 Vic. c. 16.

P. 700, note (*n*). *Bissicks* v. *Bath Colliery Co. Limited* is now reported on appeal, 3 Ex. D. 174; and *Mortimore* v. *Cragg* is now reported on appeal, 3 C. P. D. 216.

P. 720, note (*f*). After "Fisher, 943," add: *Mayer* v. *Murray*, 8 Ch. D. 424.

P. 721, note (*j*). After "*Hatton* v. *Haywood*, L. R. 9 Ch. App. 229," in the last line of the page, add: *Anglo-Italian Bank* v. *Davies*, 9 Ch. D. 275.

P. 725, note (*d*). After "*Lowe* v. *Blakemore*, L. R. 10 Q. B. 485," in the tenth line from the foot of the page, add: *Ex parte Joselyne, re Watt*, 8 Ch. D. 327.

P. 737, note (*d*). In the twenty-fourth line of the note, after "Dan. Pr. 914, 915," add: As to the effect of a sequestration upon a government pension granted to the judgment debtor exclusively as a reward for past services, see *Willcock* v. *Terrell*, 3 Ex. D. 323 (C. A.).

P. 758, note (*a*). At the end of the note, add: In certain cases the committal may be for the period of one year; see The Debtor's Act 1869 (32 & 33 Vic. c. 62), s. 4; and The Debtor's Act 1878 (41 & 42 Vic. c. 54), s. 1.

P. 773, note (*m*). At the end of the note, add : The application is granted as a matter of course ; *Re Longdendale Cotton Spinning Co.*, 8 Ch. D. 150, 153.

P. 786, note (*j*). After " *Goddard* v. *Thompson*, 26 W. R. 362," add : *A.-G.* v. *Swansea Improvements and Tramways Co.*, 9 Ch. D. 46. And after " *Cooper* v. *Cooper*, *ubi supra*," in the last line of the note, add : *Grant* v. *The Banque Franco-Egyptienne*, 3 C. P. D. 202.

P. 787, note (*k*). After " *Grant* v. *The Banque Franco-Egyptienne*, 2 C. P. D. 430," in the last line but one of the note, add : *Usil* v. *Brearley*, 3 C. P. D. 206 ; *Hankin* v. *Turner*, *re Ivory*, 27 W. R. 20 ; *Ex parte Isaacs*, *re Baum*, 9 Ch. D. 271.

P. 788, note (*p*). At the end of the note, add : The costs of taking and transcribing shorthand notes of the evidence and proceedings at the trial, which notes were used on the hearing in the Court of Appeal, will not be allowed as costs of the appeal without the special directions of the Court of Appeal ; *Ashworth* v. *Outram*, 9 Ch. D. 483.

P. 790, note (*s*). *Jones* v. *Chennell*, 26 W. R. 595, is now reported 8 Ch. D. 492.

P. 792, note (*a*). At the end of the note, add : The recovery of costs payable under an order will not be stayed pending an appeal to the House of Lords, if the solicitors to whom they are payable give their personal undertaking to refund in case of the order being reversed ; *Grant* v. *Banque Franco-Egyptienne*, 3 C. P. D. 202.

P. 862, note (*a*). *Beddow* v. *Beddow*, 26 W. R. 570, is now reported 9 Ch. D. 89. At the end of the note, add : The Court has power to grant an injunction restraining the publication of matter which a jury have found to be libellous ; *Saxby* v. *Easterbrook*, 3 C. P. D. 339. But the Supreme Court of Judicature Act 1873 (36 & 37 Vic. c. 66), s. 25, subs. 8, was not intended to alter the principles on which injunctions were formerly granted, but only to do away with certain technical difficulties ; *Fletcher* v. *Rodgers*, 27 W. R. 97 (C. A.)

P. 919, note (*b*). *New British Mutual Investment Co.* v. *Peed*, is now reported 3 C. P. D. 196. *Owen* v. *Wynn*, 26 W. R. 552, is now reported 9 Ch. D. 29. In the last line of the page, after " 2 Ch. D. 140," add : And see *Hancock* v. *Guerin*, 27 W. R. 112.

P. 951, note (*d*). At the end of the note, add : As to the effect of selecting one action as a test action, and as to selecting another action as a test action, where there is not a fair trial upon the merits in the action first selected, see *Amos* v. *Chadwick*, 9 Ch. D. 459.

P. 951, note (*e*). At the end of the note, add : As to the effect of selecting one action as a test action, and as to selecting another action as a test action, where there is not a fair trial upon the merits in the action first selected, see *Amos* v. *Chadwick*, 9 Ch. D. 459.

P. 964, note (*n*). After " *Eden* v. *Naish*, 7 Ch. D. 781," add : *Scully* v. *Lord Dundonald*, 8 Ch. D. 658 (C. A.) ; and see *Staves* v. *Staves*, 3 P. D. 42, where the Court refused to allow an action to be set down for trial after an agreement for the compromise of the action had been entered into. Where an agreement for the compromise of an action was alleged to have been obtained by the fraudulent

concealment of a material fact, it was held that the question of the validity or invalidity of the agreement ought to have been tried in a new action, and not upon a summary application in the original action; *Gilbert* v. *Endean*, 9 Ch. D. 259.

P. 965, note (*c*). *Law* v. *Garrett*, 26 W. R. 426, is now reported 8 Ch. D. 26. After "*Law* v. *Garrett*, 26 W. R. 426," add: *Randell* v. *Thompson*, 1 Q. B. D. 748; *Moffat* v. *Cornelius*, 26 W. R. 914.

P. 966, note (*a*). After "R. S. C. Ord. LV. (R. S. C., Feb. 1876, r. 7)," in the fourth line, add: see *Ex parte Cooper, re Baum*, 26 W. R. 890. The security is not necessarily confined to future costs, but may, if applied for promptly, be extended to costs already incurred; *Brocklebank* v. *King's Lynn Steamship Co.*, 3 C. P. D. 365.

P. 966, note (*c*). *Winterfield* v. *Bradnum*, 26 W. R. 353, 472, is now reported 3 Q. B. D. 324.

P. 990, note (*l*). At the end of the note, add: Under this rule an order has been made for the transfer of an action against an executor personally, in respect of a debt due from the testator's estate, charging a *devastavit*; *Re Timms*, 26 W. R. 692.

P. 992, note (*a*). In the nineteenth line of the note, after "3 Ex. D. 1 (C. A.)," add: nor where the claim endorsed on the writ is for "£50 and interest," for this is a claim exceeding £50; *Insley* v. *Jones*, 27 W. R. 111.

P. 996, note (*m*). In the twentieth line from the top of the page, after "commenced therein," add: As to the construction of the earlier part of this section, see *Davis* v. *Flagstaff Silver Mining Company of Utah*, 3 C. P. D. 228.

P. 1008, note (*a*). At the end of the note, add: Where in an action brought in an inferior Court, in respect of a claim within the jurisdiction of the Court, a counter-claim is, under 36 & 37 Vict. c. 66 (Supreme Court of Judicature Act, 1873), s. 89, set up, involving matter beyond the jurisdiction of the inferior Court, the High Court will not prohibit the inferior Court from entertaining the counter-claim; but the inferior Court can only give effect to the counter-claim by way of defence to the original claim; *Davis* v. *Flagstaff Silver Mining Co. of Utah*, 3 C. P. D. 228.

P. 1017, note (*b*). After "26 W. R. 183 (C. A.)," in the thirteenth line of the note, add: The Court has power to adopt the report of the referee, either wholly or partially; or to remit the matter to the referee for further investigation; or to disregard what has been done by the referee, and to proceed upon any evidence properly before the Court; but the Court has no power to alter or vary the report acting upon the evidence taken before the referee, but which is not properly before the Court; *Dunkirk Colliery Co.* v. *Lever*, 9 Ch. D. 20. It seems to be a convenient practice for the referee to state in his report not only his decision, but also any facts proved in evidence before him, and the principles upon which he has dealt with such facts, that the Court may be in a position to revise his report, and, if it thinks fit, to come to a different decision, without sending the matter back to the referee; see *Dunkirk Colliery Co.* v. *Lever*, 9 Ch. D. 20.

P. 1022, note (*r*). In the fifth line of the note, after "pp. 1016, 1017," add: As to stating in the report the facts proved in evidence before the referee, and the principles upon which he has dealt with such facts, see *Dunkirk Colliery Co.* v. *Lever*, 9 Ch. D. 20.

P. 1023, note (*u*). In the second line of the note, after "*Longman* v. *East*, 3 C. P. D. 142," add: *Dunkirk Colliery Co.* v. *Lever*, 9 Ch. D. 20.

P. 1024, note (*v*). In the second line of the note, after "*Longman* v. *East*, 3 C. P. D. 142," add: *Dunkirk Colliery Co.* v. *Lever*, 9 Ch. D. 20.

P. 1025, note (*a*). *Clow* v. *Harper*, 26 W. R. 364, is now reported 3 Ex. D. 198.

P. 1029, note (*j*). *Beddow* v. *Beddow*, 26 W. R. 570, is now reported 9 Ch. D. 89.

P. 1040, note (*a*). In the ninth line, after "where an action or issue is tried by a jury, costs follow the event, unless the Judge before whom the action or issue is tried, or the Court, shall otherwise order; R. S. C., Ord. LV.," add: The event is the result of the entire litigation; it is the conclusion of the whole matter or proceeding which commenced with the writ of summons and ended with the final judgment; so that the party who succeeds in his action is, in the absence of any special directions or orders, entitled to the whole costs of the entire action; *Creen* v. *Wright*, 2 C. P. D. 354; *Field* v. *Great Northern Railway Co.*, 3 Ex. D. 261. The costs over which, under this rule, the Court has a discretion, are only the costs of proceedings which have actually come into Court, and from the time that such proceedings have come into Court; *Re Brandreth's Trade Mark*, 9 Ch. D. 618. In the fifteenth line from the top of the page, add: *Garnett* v. *Bradley*, 26 W. R. 698, is now reported 3 App. Cas. 944. In the twenty-eighth line, after "*Betts* v. *Cleaver*, L. R. 7 Ch. 513," add: *Kirkwood* v. *Webster*, 9 Ch. D. 239. And in the twenty-eighth line, after "10 Ch. 540," add: the costs of taking and transcribing shorthand notes of the evidence and other proceedings at the trial will not be allowed without a special direction for that purpose; *Ashworth* v. *Outram*, 9 Ch. D. 483; *Wells* v. *Mitcham Gas Co.*, 27 W. R. 112.

P. 1041, note (*a*). After "rule 18" in the seventh line of the note, add: *Re Wormsley*, *Baines* v. *Wormsley*, 27 W. R. 36. And in the next line, after "As to setting off costs, see *Ibid.* rule 19," add: and *Robarts* v. *Buée*, 8 Ch. D. 198.

P. 1051, note (*q*). *London Syndicate*, *Limited* v. *Lord*, 26 W. R. 427, is now reported 8 Ch. D. 84. After "*London Syndicate*, *Limited* v. *Lord*, 26 W. R. 427," add: and *Freeman* v. *Cox*, 8 Ch. D. 148.

P. 1143, note (*r*). In the sixth line of the note, after "26 W. R. 524," add: *Re Heritage*, *ex parte Docker*, 3 Q. B. D. 726.

P. 1143, note (*s*). At the end of the note, add: As to who is a "person liable to pay or who has paid" the bill, within sec. 38, see *Re Heritage*, *ex parte Docker*, 3 Q. B. D. 726.

P. 1144, note (*u*). At the end of the note, add: As to who is a "person liable to pay" the bill, within sec. 38, see *Re Heritage*, *ex parte Docker*, 3 Q. B. D. 726.

P. 1145, note (*v*). At the end of the note, add: As to what persons may apply under sec. 38, see *Re Heritage, ex parte Docker*, 3 Q. B. D. 726.

P. 1146, note (*a*). At the end of the note, add: *Bulley* v. *Bulley*, 8 Ch. D. 479.

P. 1148, note (*e*). After "*Owen* v. *Henshaw*, 7 Ch. D. 385," add: *Higgs* v. *Schrader*, 3 C. P. D. 252.

P. 1167, note (*h*). *Pelling* v. *Goddard*, 26 W. R. 476, is now reported 9 Ch. D. 185.

P. 1224, note (*a*). At the end of the note, add: Under these sections the Court will order a particular sale to be carried out, instead of making an order for sale generally, if that course appear to be preferable; *re The Santon*, 26 W. R. 810. Where the petitioner claimed as executor and general legatee of the registered owner, and made the application within a year, though more than four weeks, after the occurrence of the event on which the transmission took place: held, that it was not necessary to serve the Crown or any other person; *re The Santon, ubi supra.*

P. 1523, note (*a*). At the end of the note, add: The Court has, under R. S. C. Ord. LV., discretion over the costs of proceedings under the Trade Marks Registration Acts from the moment that such proceedings come into Court; but it has no jurisdiction over the costs of the proceedings in the Registrar's Office; *Re Brandreth's Trade Mark*, 9 Ch. D. 618.

P. 1259, note (*m*). At the end of the note, add: The property may be directed to be sold out of Court, and either by public auction or private contract; *Re Adams' Settled Estates*, 9 Ch. D. 116; *Re Andrews' Settled Estates*, 26 W. R. 811.

FORMS AND PRECEDENTS.

CHAPTER I.

PARTIES.

SECTION I.—IN GENERAL (*a*).

(*a*) All persons may be joined as plaintiffs in whom the right claimed is alleged to exist, whether jointly or severally, or in the alternative; R. S. C. Ord. XVI. 1; in *Booth* v. *Briscoe*, 2 Q. B. D. 496, several persons were allowed to join in bringing an action for libel; but in *Appleton* v. *Chapel Town Paper Co.*, 45 L. J. Ch. 276, it was held that two owners of distinct properties may not join as plaintiffs in an action to restrain a nuisance. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative; R. S. C. Ord. XVI. 3; or the plaintiff, if he is in doubt as to the person from whom he is entitled to redress, may join two or more defendants to the intent that in such action, the question as to which, if any, of the defendants is liable, and to what extent may be determined as between all parties to the action; *Ibid.*, rule 6; thus, where there was a dispute as to the agent's authority, the plaintiff was allowed to join both the principal and the agent as defendants, and to claim relief against the principal, or, in the event of its being determined that the agent had no authority, then against the agent; *Honduras Inter-Oceanic Ry. Co.* v. *Lefevre & Tucker*, 2 Exch. D. 301; so, a plaintiff may join an alleged trespasser, who justified under a grant from the plaintiff's landlord, and the landlord who had covenanted for quiet enjoyment; *Child* v. *Stenning*, 5 Ch. D. 695. Where a plaintiff joins two defendants and claims relief against them in the alternative, he is not bound to elect at the trial against which defendant he intends to proceed, but may proceed against both; but if he succeeds as against one defendant, but his claim is dismissed as against the other, the costs of the successful defendant must be borne by the plaintiff and not by the unsuccessful defendant; *Child* v. *Stenning*, 7 Ch. D. 413. The plaintiff may at his option join as parties to the same action, all or any of the persons severally or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes; R. S. C. Ord. XVI. 5. It is not necessary that every defendant to an action should be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a judge may make such order as may appear just, to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in an action in which he may have no interest; R. S. C. Ord. XVI. 4; *Cox* v. *Barker*, 3 Ch. D. 359; and see *Manchester and Sheffield Ry. Co.* v. *Brooks*, 2 Ex. D. 243. No action will be defeated by reason of the misjoinder of parties; R. S. C.

Ord. XVI. 13; but judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for such relief as he or they may be entitled to without amendment; the defendant, though unsuccessful, being entitled to his costs occasioned by joining any person or persons, who shall not be found entitled to relief, unless the Court in disposing of the costs of the action otherwise directs; *Ibid.*, rule 1; in like manner judgment may be given against such one or more of the defendants as may be found liable according to their respective liabilities without amendment; *Ibid.*, rule 3. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action on behalf of, or for the benefit of all parties so interested; R. S. C. Ord. XVI. 9; 15 & 16 Vict. c. 86, s. 42, rule 5, applied to actions in the High Court of Justice by Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 76, and by R. S. C. Ord. XVI. 11. Where a person sues on behalf of himself and other persons under this rule, it should be stated in the title of the writ and also in the indorsement of claim that he so sues; *Worraker* v. *Pryor*, 2 Ch. D. 109; *Re Royle, Fryer* v. *Royle*, 5 Ch. D. 540; *Eyre* v. *Cox*, 24 W. R. 317; overruling *Cooper* v. *Blieset*, 1 Ch. D. 691; in such a case the other persons will not be ordered to be added in order that the defendant may have a better security for costs; *De Hart* v. *Stevenson*, 1 Q. B. D. 313. If the representatives of a class are fairly selected, and the matter is fairly contested, all members of the class are bound by the decision; *Commissioners of Sewers, &c.* v. *Gellatly*, 3 Ch. D. 610. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and will be considered as representing such parties in the action; but the Court or a judge may at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto; R. S. C. Ord. XVI. 7; 15 & 16 Vict. c. 86, s. 42, rule 9, applied to actions in the High Court of Justice by Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 76, and by R. S. C. Ord. XVI. 11. The following rules as to parties, enacted by 15 & 16 Vict. c. 86, s. 42, are applied to actions pending in the High Court of Justice by the Supreme Court of Judicature Act (36 & 37 Vict. c. 66) s. 76, and by R. S. C. Ord. XVI. 11; Rule 1: Any residuary legatee or next of kin, may, without serving the remaining residuary legatee or next of kin, have a decree for the administration of the personal estate of a deceased person; Rule 2: Any legatee interested in a legacy charged on real estate, and any person interested in the proceeds of real estate directed to be sold, may without serving any other legatee or person interested in the proceeds of the estate, have a decree for the administration of the estate of a deceased person; Rule 3: Any residuary devisee or heir may, without serving any co-residuary devisee or co-heir, have a like decree; Rule 4: Any one of several *cestuis que trustent* under any deed or instrument may, without serving any other of such *cestuis que trustent*, have a decree for the execution of the trusts of the deed or instrument; Rule 6: Any executor, administrator, or trustee, may obtain a decree against any one legatee, next of kin, or *cestui que trust*, for the administration of the estate or the execution of the trusts. In all these cases, however, the Court may, if it shall see fit, require any other person or persons to be made a party or parties to the action, may give the conduct of the action to such party as it shall think proper, and may make such order in any case as it may deem just for placing the defendant on

the record on the same footing, in regard to costs, as other parties having a common interest with him in the matters in question; 15 & 16 Vict. c. 86, s. 42, rule 7. And in all the above cases the persons, who, according to the practice of the Court of Chancery at the time of the passing of the 15 & 16 Vict. c. 86, were necessary parties to the action, must be served with notice of the judgment, and after such notice they will be bound by the proceedings in the same manner as if they had been originally made parties to the action, and they may by an order of the Court have liberty to attend the proceedings under the judgment, and any party so served may apply to the Court to add to the judgment; 15 & 16 Vict. c. 86, s. 42, rule 8; as to proceeding by service of notice of the judgment, see *post*, pp. 17 to 27. For the decisions upon this section, see Morgan, pp. 187, *et seq.* By the Partition Act, 1868, 31 & 32 Vict. c. 40, sec. 9, a partition action may be maintained against any one or more of the parties interested, without making the others parties to the action; but all persons who, if the act had not been passed, would have been necessary parties to the action, are to be served with notice of the judgment or order on the hearing or trial, and after such notice they will be bound by the proceedings as if they had been originally parties to the action, and are to be deemed parties thereto; and such persons may have liberty to attend the proceedings, and may apply to the Court to add to the judgment or order. If in any action or other proceeding before the Court it appears to the Court that any deceased person who was interested in the measures in question has no legal personal representative, the Court may either proceed in the absence of any person representing the estate of such deceased person, or may appoint some person to represent such estate for all the purposes of the action or other proceeding, on such notice to such person or persons, if any, as the Court shall think fit, either specially, or generally by public advertisements; and the order so made by the Court, and any orders consequent thereon, will bind the estate of such deceased person in the same manner as if there had been a duly constituted legal personal representative of such deceased person, and such legal personal representative had been a party to the action or proceeding, and had duly appeared and submitted his rights and interests to the protection of the Court; 15 & 16 Vict. c. 86, s. 44, applied to actions in the High Court of Justice by 36 & 37 Vict. c. 66, s. 76. For the decisions upon the above section see Morgan, pp. 190, *et seq.* In any case in which the right of an heir-at-law, or the next of kin, or a class depends upon the construction which the Court may put upon an instrument, and it is not known or is difficult to ascertain who is or are such heir-at-law, or next of kin, or class, and the Court shall consider that in order to save expense, or for some other reason, it will be convenient to have the question or questions of construction determined before such heir-at-law, next of kin, or class, shall have been ascertained by means of inquiry or otherwise, the Court may appoint some one or more person or persons to represent such heir-at-law, next of kin, or class, and the judgment of the Court in the presence of such person or persons will be binding upon the party or parties, or class so represented; R. S. C., Ord. XVI., 9*a* (R. S. C., June, 1876, r. 7); for an order made under this rule on a motion for judgment, see *Re Peppitt's Estate, Chester* v. *Phillips*, 4 Ch. D. 230. Any two or more persons claiming or being liable as co-partners may sue or be sued in the names of their respective firms, if any; and any person carrying on business in the name of a firm apparently consisting of more than one person, may be sued in the name of such firm; R. S. C., Ord. XVI., 10, 10*a* (R. S. C., June, 1876, r. 8).

Section II.—Adding, Striking Out, and Substituting Parties (*a*).

(*a*) Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just: R. S. C. Ord. XVI. 2; where a trustee, executor, or administrator sues or is sued on behalf of or as representing the property or estate of which he is trustee or representative, the Court or judge may, at any stage of the proceedings, order any of the parties beneficially interested in the trust or estate to be made parties to the action, either in addition to or in lieu of any of the previously existing parties thereto: *Ibid.*, rule 7; in actions constituted as to parties under 15 & 16 Vict. c. 86, s. 42 (see *ante*, pp. 2, 3, n. (*a*)), the Court may, if it shall see fit, require any person or persons not already a party or parties to the action to be made a party or parties thereto; 15 & 16 Vict. c. 86, s. 42, rule 7, applied to actions in the High Court of Justice by the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 76, and R. S. C. Ord. XVI. 11; and in any action the Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and upon such terms as may appear to the Court or judge to be just, order that the name or names of any party or parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the name or names of any party or parties, who ought to have been joined, whether as plaintiffs or defendants, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the action, be added: R. S. C. Ord. XVI. 13; an application under any of these rules to add, strike out, or substitute a plaintiff or defendant, must be made by motion or summons; R. S. C. Ord. XVI. 14; of which notice must be given, for an alteration in the parties to an action will not be made on an *ex parte* application; *Tildesley* v. *Harper*, 3 Ch. D. 277; but in *Re Wortley*, 4 Ch. D. 180, an order adding defendants was made on the *ex parte* application of the plaintiff, the order being conditional in the first instance, but to become absolute unless the defendants added showed cause to the contrary within eight days. The making of an order adding, striking out, or substituting a party is discretionary with the Court or judge: *New Westminster Brewery Co.* v. *Hannah*, 24 W. R. 899. Under rule 3 the application can only be made by a plaintiff, and an order will be granted only when there has been a *bonâ fide* mistake; *Clowes* v. *Hilliard*, 4 Ch. D. 413; though it is immaterial whether the mistake be one of law or of fact; *Duckett* v. *Gover*, 6 Ch. D. 82; 25 W. R. 455. Under rule 13, an application may be made either by a plaintiff or a defendant; by a plaintiff, *Re Wattey*, 4 Ch. D. 180; *Edwards* v. *Lowther*, 24 W. R. 434; by a defendant, *Day* v. *Radcliffe*, 24 W. R. 844; *Norris* v. *Beazley*, 2 C. P. D. 80; *Vallance* v. *Birmingham Corporation*, 2 Ch. D. 369. No person can be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent

1. Notice of motion or summons to add, strike out, or substitute a party (*b*).

Formal parts: see post No. 1571 *or* No. 881.
on the part of the plaintiff [*or as may be*] that [*here specify the alteration in the parties to the action which it is desired to have made; as thus:*]

that the name of —— may be added as a party plaintiff in this action; *or*,
that the name of the above-named —— as a party plaintiff in this action may be struck out; *or*,
that the name of the above-named —— as a party plaintiff in this action may be struck out and that the name of —— may be substituted therefor; *or*,
that the name of —— may be added as a party defendant to this action; *or*,
that the name of the above-named —— as a party defendant to this action may be struck out; *or*,
that the name of the above-named —— may be struck out as a party plaintiff in this action and be inserted as a party defendant thereto;

[*where a defendant is added, say:*] and that the plaintiff may be at liberty to sue out an amended writ of summons in this action,

thereto; R. S. C. Ord. XVI. 13; an application to strike out the name of a person added as plaintiff without his consent, can only be made by the person so added himself, and not by a defendant; *Duckett* v. *Gover*, 25 W. R. 554. Only those persons can be added as defendants against whom the plaintiff has some claim, or with whom he has some dispute, and who might fairly have been joined in the first instance; *Norris* v. *Beazley*, 2 C. P. D. 80; *Edwards* v. *Lowther*, 24 W. R. 434; *Day* v. *Radcliffe*, 24 W. R. 844. When parties are added as defendants, the plaintiff must (unless it is otherwise ordered by the Court or judge), file an amended copy of and sue out a writ of summons, and serve all parties whose names are so added as defendants with such writ, or a notice in lieu of service thereof, in the same manner as original defendants are served, or in such manner as may be prescribed by any special order, and the proceedings as against such defendants will be deemed to have begun only on the service of such summons or notice: R. S. C. Ord. XVI. 13, 15; and if in such a case a statement of claim has been delivered previously to such parties being added as defendants, such statement of claim must, unless otherwise ordered by the Court or a judge, be amended in such manner as the making such new defendants parties shall render desirable, and a copy of such amended statement of claim must be delivered to the new defendants either at the time when they are served with the amended writ of summons or notice thereof, or afterwards within four days after appearance: R. S. C. Ord. XVI. 16. An order will not be made to strike out the name of a plaintiff without providing that security for the costs of the action shall be given, unless such security be waived by the defendant, for such an order has the effect of lessening the defendant's security for costs; Dan. Pr. 331, and note (*y*). As to security for costs, see R. S. C. Ord. LV.; R. S. C. Feb. 1876, rule 27; and *post*, Chap. XXIX. p. 966.

(*b*) The application may be made either by the plaintiff or the defendant; R. S. C. Ord. XVI. 13, and note (*a*) *supra;* and at any stage of the proceedings, *ibid.;* it should be upon notice; see cases cited, note (*a*) at p. 4 *supra*.

and to serve the same upon the said ——, and also to amend his statement of claim in this action by inserting appropriate words to charge the said —— and otherwise as he may be advised (*c*):
[*where a defendant is not added, say:*] and that the writ of summons and subsequent proceedings in this action may be amended accordingly;
[*if the applicant has given notice of motion for an injunction, or for a receiver, which is still pending* (*d*), *add:*] without prejudice to the notice of motion for an injunction [*Or*, for a receiver] in this action;
[*if the applicant has obtained an injunction* (*e*), *add:*] without prejudice to the injunction awarded in this action;
[*Conclude:*] And that the costs of this application may be costs in the action.

2.

Notice of motion or summons by plaintiff to make a defendant of his co-plaintiff refusing to proceed (*f*).

Formal parts: see post No. 1571 *or* No. 881.
on the part of the plaintiff A. B., that the name of the above-named C. D. may be struck out as a party plaintiff in this action, and may be inserted as a party defendant thereto; and that the writ of summons and all subsequent proceedings in this action may be amended accordingly; and that the said C. D. may be ordered to pay to the plaintiff A. B. the costs occasioned by such amendment, and also the costs of giving any security for costs to which the defendants, or any of them, may be held entitled in consequence of such amendment and incidental thereto, and also the costs of and incident to this application, such costs to be taxed as between solicitor and client.

3.

Notice of motion or summons to turn action by husband and wife into action by wife alone by her next friend (*g*).

Formal parts: see post No. 1571 *or* No. 881.
on the part of the plaintiffs, that the name of the above-named A. B. [*husband*] may be struck out as a party plaintiff in this action and may be inserted as a party defendant thereto; and that this action may be prosecuted by C., the wife of the said A. B., as sole plaintiff therein, by G. H., of [*residence and addition*], her next friend; and that the costs of this application may be costs in the action.

(*c*) See R. S. C. Ord. XVI. rules 13, (*ad finem*,) 15, 16; and *ante*, note (*a*), pp. 4, 5.
(*d*) See Dan. Pr. 350.
(*e*) See Dan. Pr. 349; *Harvey* v. *Hall*, L. R. 11 Eq. 31.
(*f*) See Dan. Pr. 331, and note (*z*).
(*g*) *Kelly* v. *Randell*, V.-C. S. at Chambers, 16 March, 1865, Reg. Lib. A. 467.

Formal parts: see post No. 1571.

4. Notice of motion to strike out name of person added as plaintiff without his consent(*h*).

on the part of A. B., whose name was by the order made in this action and dated the —— day of ——, 187—, ordered to be added as a plaintiff suing without a next friend [*Or*, to be added as the next friend of the plaintiff C. D., a person under disability], that the said order may be discharged; and that the name of the said A. B. as a plaintiff [*Or*, as such next friend], may be struck out; and that the writ of summons in this action and the copy thereof filed with the Clerk of Records and Writs [*Or*, with the Registrar of the District Registry at ——] and all subsequent proceedings in this action may be altered accordingly; and that —— may be ordered to pay to the said A. B., his costs of this application and of amending the said proceedings.

Section III.—Of a Change of Parties on a Change or Transmission of the Interest or Liability of any Party (*a*).

(*h*) See R. S. C. Ord. XVI. 13, and *ante*, pp. 4, 5, note (*a*). The application can only be made by the person himself whose name is added as plaintiff or as next friend of the plaintiff, and not by a defendant: *Duckett* v. *Gover*, 25 W. R. 554.

(*a*) Under the old practice where a change or transmission of the interest or liability of a party to a proceeding took place after the commencement of the proceeding, the proceeding in some cases abated, in others became defective, and as a general rule no step could be taken in a proceeding after it had abated or become defective, until an order had been made to revive or carry on the proceeding; Dan. Pr. 1377. By the Rules of the Supreme Court, however, it is provided that if the cause of action survive or continue, an action shall not become abated nor defective by a change or transmission of the interest or liability of any of the parties to the action, but that if, by reason of such change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order may be obtained that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties; R. S. C. Ord. L. rules 1, 2, 3, 4; in the case of the marriage, death, or bankruptcy or devolution by operation of law of the estate of any party to the action, the proper person to make a new party to the action is the husband, personal representative, trustee, or other successor in interest of such party; and in the case of an assignment, creation, or devolution of any estate or title, *pendente lite*, the proper person to make a new party to the action is the person to or upon whom such estate or title has come or devolved; *Ibid.*, rules 2, 3. Where a plaintiff by reason of his becoming bankrupt, or of his affairs being liquidated by arrangement, ceases to have any interest in the

subject matter of the action, he can take no further step therein; but the trustee in bankruptcy or in liquidation must make himself a party to the action and continue the same; *Jackson* v. *North Eastern Ry. Co.*, 25 W. R. 518; 5 Ch. D. 844; and on the other hand it is not sufficient in such a case for the defendants to serve notices and other proceedings on the plaintiff, but the trustee must be served; *Wright* v. *Swindon Ry. Co.*, 4 Ch. D. 164; *Eldridge* v. *Burgess*, 7 Ch. D. 411. Where two out of five defendants jointly and severally liable to the plaintiff had become bankrupt, it was held that the action had not become abated, and that it might proceed against the remaining three without bringing the trustees in bankruptcy of the remaining defendants before the Court; *Lloyd* v. *Dimmack*, 7 Ch. D. 398. It has been held that the provisions of Ord. L. apply not only to the case of an action, but also to that of a proceeding commenced by petition; *Re Atkins*, 1 Ch. D. 82. An order to carry on the proceedings is necessary and proper only where the interest or liability of some party to the action devolves upon some person or persons not parties to the action, or where some person or persons not parties to the action become interested in the subject-matter thereof; such an order is irregular where the interest or liability of a party is by his death or other event altogether determined; Dan. Pr. 1388, 1392; or his interest or liability survives to some person or persons already parties to the proceeding; Dan. Pr. 1392, 1393. In the Court of Chancery the rule was that an order of revivor or supplement could before decree only be obtained by the plaintiff or by the successor in interest of the plaintiff, and not by a defendant or successor in interest or liability of a defendant, whose only course if the plaintiff or his successor neglected to obtain the order, was to move upon notice to the plaintiff or his successor, that unless an order of revivor or supplement were obtained within a limited time, the bill might stand dismissed for want of prosecution; Dan. Pr. 1378, 1379; but after decree a defendant or the successor in interest or liability of a defendant might obtain an order of revivor or supplement, provided he gave previous notice to the plaintiff or his successor of his intention to do so; Dan. Pr. 1379. The practice at law was similar, the plaintiff or his successor alone having the right to proceed; but if he made default in so doing the defendant or his successor might obtain judgment for his costs; C. L. P. Act 1852 (15 & 16 Vict. c. 76), ss. 135—142; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 92. There is nothing in the new rules to alter this procedure, and consequently it is apprehended that before judgment an order to carry on the proceedings can be obtained only by the plaintiff or his successor, but that after judgment the order may be obtained either by the plaintiff or his successor, or by a defendant or his successor; see *Wright* v. *Swindon Ry. Co.*, 4 Ch. D. 164. As to the time within which an order to carry on the proceedings should be obtained, see Dan. Pr. 1386. The order when obtained must be served upon the continuing parties to the action or their solicitors, and upon each new party, unless the person by whom the order was obtained be himself the only new party; R. S. C. Ord. L. 5. As to the continuing parties who have appeared, the order will be properly served by being left at the address for service of them or their solicitors; R. S. C. Ord. XIX. 6; Cons. Ord. III. 4, 6; as to continuing defendants who have not appeared, it will be properly served by being filed with the record and writ clerk or with the district registrar; R. S. C. Ord. XIX. 6, 29; the new party or parties must be served personally, but an order for substituted service may be obtained; Dan. Pr. 1384 and note (*n*); if any new party is out of the jurisdiction, leave to serve the order out of the jurisdiction must be obtained. Upon service of the order the parties served therewith are bound thereby,

5. Petition of course for order for plaintiff's successors to carry on proceedings (*b*).

Formal parts : see post No. 1576.

The humble petition of (*c*)

the plaintiffs C. D. and E. F., and of P. Q. and R. S., the legal personal representatives [*or as the case may be*] of the late plaintiff A. B., now deceased [*or as the case may be*]; *or,*

the plaintiffs C. D. and E. F. ; *or,*

P. Q. and R. S., the legal personal representatives [*or as the case may be*] of the late plaintiff A. B., now deceased [*or as the case may be*].

Showeth as follows :

1. [*State shortly the last material proceeding in the action and*

and if not already parties to the action, they become parties thereto, and must within eight days after service enter an appearance in the action, in the same manner as if they had been served with a writ of summons ; R. S. C. Ord. L. 5 ; and any person served therewith may within a limited time apply to the Court or a judge to discharge or vary the order ; *Ibid.*, rules 6, 7. A new party representing the interest of a former party who is brought before the Court by an order to carry on the proceedings, is in exactly the same plight and condition as his predecessor ; is bound by his acts, and may be subject to all the costs of the proceeding from the commencement ; Dan. Pr. 1385, and note (*s*). If the party obtaining the order to carry on the proceedings is resident out of the jurisdiction, he may be ordered to give security for costs ; Dan. Pr. 1387, and note (*u*) ; for form of application and other forms as to security for costs, see *post*, Chap. XXIX., p. 966. When the order has been served, it should be left at the Record and Writ Clerks' office, or at the district registry for entry ; Dan. Pr. 1384, 1394.

(*b*) The application for an order that the proceedings in the action shall be carried on is *ex parte* upon an allegation of the change or transmission of interest or liability, or of a person interested having come into existence ; R. S. C., Ord. L., 4. The proper mode of obtaining the order is by petition of course at the Rolls ; *Roffey* v. *Miller*, 24 W. R. 109 ; *Walker* v. *Blakemore*, W. N. (1876), 112 ; and not by application to the Court ; *Ibid. ; Crane* v. *Loftus*, 24 W. R. 93 ; *Darey* v. *Whittaker*, W. N. (1876), 17 ; 24 W. R. 244 ; and in one case an application to the Court was refused, and the applicant was directed to the order of course office ; *Roffey* v. *Miller*, 24 W. R. 109. It is usually sufficient to allege in the petition the last material proceeding in the action and the present position thereof, the particular event causing the change or transmission of interest or liability, and the consequent change or transmission thereof ; in some cases, however, it may be necessary to state shortly the objects of the suit ; Pemberton on Revivor and Supplement, p. 111. Except in the case of a change in the registered public officer (Dan. Pr. 1394 and note (*p*) ; see No. 11 *post*), no evidence is required of the alleged facts ; but if the allegation be not substantially true, the order may be discharged with costs upon a special application ; Dan. Pr. 1380, and notes (*x*), (*y*) ; Dan. Pr. 1389.

(*c*) Where there is a change or transmission of the interest of one of several plaintiffs, the order to carry on the proceedings may be obtained either by the surviving plaintiffs and the successors of the other plaintiff jointly, or by the surviving plaintiffs or any of them separately, or by the successors of the plaintiff whose interest has been transmitted separately ; Dan. Pr. 1378. As to when a defendant may obtain the order, see *ante*, p. 8, note (*a*).

the present position thereof; as thus:] On the —— day of ——, 187—, judgment was given in this action, whereby certain accounts and enquiries were directed to be taken and made, which accounts and enquiries are now in course of prosecution.

2. [*State the particular event which has caused the change or transmission of interest or liability, and allege the consequent change or transmission thereof; for forms of allegation, see post* No. 7.]

Your petitioners therefore humbly pray that the proceedings in this action may be carried on and prosecuted by your petitioners [*Or*, by your petitioners and the said P. Q. and R. S.; *Or*, by your petitioners and the said C. D. and E. F.] against the defendants in like manner as such proceedings might have been carried on and prosecuted by the said A. B., C. D., and E. F., if the said A. B. had not died [*Or*, had not become bankrupt; *or as the case may be*].

And your petitioners will ever pray, *&c.*

6.

Petition of course for order to carry on proceedings against defendant's successors (*d*).

Formal parts: see post No. 1576.

The humble petition of the plaintiffs (*e*).

Showeth as follows:

1. [*See par.* 1 *of* No. 5 *ante.*]
2. [*See par.* 2 *of* No. 5 *ante.*]

Your petitioners therefore humbly pray that the proceedings in this action may be carried on and prosecuted by your petitioners against the said P. Q. and R. S. [*successors in interest or liability of the defendant*]

[*If there were several defendants, say:*] against the said C. D. and E. F. [*continuing defendants*], and the said P. Q. and R. S. [*successors of a defendant*]

in like manner as such proceedings might have been carried on and prosecuted against the said A. B. [*Or*, against the said A. B., C. D., and E. F.] if the said A. B. had not died [*Or*, had not become bankrupt; *or as the case may be*].

And your petitioners will ever pray, *&c.*

7.

Common forms of allegations in petition for order to carry on proceedings.

Assignment.—By an indenture, dated the —— day of ——, 187—, and made between, *&c.*, all the share and interest of the plaintiff [*or as may be*] has been assigned to and has become vested in E. F.

(*d*) See note (*b*) to No. 5 *ante.*

(*e*) As to when a defendant may obtain the order see *ante*, p. 8, note (*a*).

Bankruptcy.—On the —— day of ——, 187—, the plaintiff [*or as may be*] was adjudicated a bankrupt; and C. D. has been appointed, and now is, the trustee of the property of the said plaintiff [*or as may be*] under the said bankruptcy.

Bankruptcy: Petition for arrangement.—On the —— day of ——, 187—, the plaintiff [*or as may be*] presented a petition to the (London) Bankruptcy Court for the liquidation of his affairs by arrangement; and C. D. has been appointed, and is now, the trustee of his estate and effects under the said liquidation.

Bankruptcy: Appointment of new trustee.—E. F. has been appointed, and is now, the trustee of the property of the said A. B., in lieu of the said C. D.

Death.—On the —— day of ——, 187—, the plaintiff [*or as may be*] died.

Heirship.—The said plaintiff [*or as may be*] left A. B. his heir-at-law.

Or, his heir according to the custom of the manor of C., whereof the hereditaments in the pleadings mentioned are holden.

Letters of administration.—On the —— day of ——, 187—, letters of administration of the personal estate of the said A. B. were granted by the Principal Registry [*or as may be*] of the Probate Division of her Majesty's High Court of Justice to C. D: whereby he became, and is now, the legal personal representative of the said A. B.

Lunacy, and appointment of committee.—On the —— day of ——, 187—, the plaintiff [*or as may be*] was found lunatic by inquisition [*or as may be*]; and C. D. has been appointed, and is now, the committee of his estate.

Lunacy: Appointment of new committee.—On the —— day of ——, 187—, E. F. was appointed, and is now, the committee of the estate of the said A. B., in lieu of the said C. D.

Marriage of female plaintiff.—On the —— day of ——, 187—, the plaintiff A. B. intermarried with, and she is now the wife of, C. D., of, *&c.*

Probate.—The said A. B., by his last will, dated the —— day of ——, 187—, appointed C. D. and E. F. executors thereof. On the —— day of ——, 187—, the said will was proved by the said C. D. and E. F., in the Principal Registry [*or as may be*] of the Probate Division of her Majesty's High Court of Justice: whereby they became, and are now, the legal personal representatives of the said A. B.

8.

Petition of course for order to carry on proceedings against representatives of deceased accounting party with an account of his estate on non-admission of assets(*f*).

Formal parts : *see post* No. 1576.

The humble petition of the plaintiff.

Showeth as follows :

1. [*See par.* 1 *of* No. 5 *ante.*]
2. [*See par.* 2 *of* No. 5 *ante.*]

Your petitioner therefore humbly prays that the proceedings in this action may be carried on and prosecuted by your petitioner against the said P. Q. and R. S. in like manner as the same might have been carried on and prosecuted against the said E. F. if he had not died ; and that what on taking the said accounts may appear to be due from the said E. F. may be answered by the said P. Q. and R. S., his executors [*Or*, administrators], out of his assets in a due course of administration ; and that in case the said P. Q. and R. S. shall not admit assets of the said E. F. sufficient for that purpose, an account may be taken of his personal estate come to the hands of the said P. Q. and R. S., or of any person or persons by the order or for the use of them, or either of them.

And your petitioner will ever pray, *&c.*

9.

Petition of course for husband and wife to carry on proceedings where female plaintiff marries after action brought (*ff*).

Formal parts : see post No. 1576.

The humble petition of the plaintiff, A. H., now A. B., the wife of C. B., of [*residence and addition*], and of the said C. B.

Showeth as follows :

1. [*Same as par.* 1 *of* No. 5 *ante.*]
2. [*State the fact of the marriage, as in* No. 7 *ante.*]

Your petitioners therefore humbly pray, that the

(*f*) When an order to carry on proceedings is made against the personal representatives of any accounting party, the usual accounts of the estate of the deceased defendant will if required be ordered to be taken if they do not admit assets ; Dan. Pr. 1380, and note (*e*). For forms of order see *Re Penney, Penney* v. *Lancaster*, M. R. 8 December, 1856, Rolls Lib. ; *Carter* v. *Drew*, M. R. 19 December, 1862, Reg. Lib., A. 2451.

(*ff*) Where a female plaintiff marries after action brought, an order must be obtained to carry on the proceedings ; where the property in litigation is the wife's separate estate, the proceedings should be carried on by the wife, by her next friend against the former defendants, and her husband as a co-defendant ; in other cases the proceedings may be carried on by the husband and wife as co-plaintiffs ; see Dan. Pr. 102, 103, 1378. Where it is desired to carry on the proceedings by the husband and wife as co-plaintiffs, the order may be obtained on petition of course ; but where the proceedings are to be carried on by the wife by her next friend, it is necessary to apply by

proceedings in this action may be carried on and prosecuted by your petitioners against the above-named defendants in like manner as such proceedings might have been carried on and prosecuted by the said A. H., now A. B., if she had not married.

[*Same as* No. 170 *post.*]

10. Summons to carry on proceedings by female plaintiff by her next friend against husband where female plaintiff marries after action brought (*ff*).

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11. Petition of course for leave for new public officer to carry on proceedings (*g*).

Formal parts: see post No. 1576.

The humble petition of the —— company.

Showeth as follows:

1. This action was commenced on behalf of the above-named company by the above-named A. B. as their registered public officer. [*State the last material proceeding in the action and the present position thereof; see par.* 1 *of* No. 5 *ante.*]

2. On the —— day of ——, 187—, the said A. B. died [*Or,* resigned—*Or,* was removed from—his office of public officer of the said company].

3. C. D., of [*residence and addition*], is now the registered public officer [*Or,* one of the registered public officers] of the said company, and is duly registered and appointed to sue and be sued on behalf of the said company.

Your petitioners therefore humbly pray that the proceedings in this action may be carried on and prosecuted in the name of C. D., as their registered public officer, instead of in the name of the said A. B.

And your petitioners will ever pray, *&c.*

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summons to approve a next friend, and it seems proper to ask by the same summons for the order to carry on the proceedings. For the practice on the marriage of a female plaintiff who is also next friend of her co-plaintiff's infants, see *Jones* v. *Jones*, W. N. (1869), 183; 17 W. R. 1003.

(*ff*) See note (*ff*) to No. 9, *ante.*

(*g*) See 7 Geo. 4, c. 46, s. 9; Dan. Pr. 26, 1394, and note (*p*). For form of order see *Meek* v. *Burnley*, M. R., 12 Jan., 1863, Reg. Lib. B. 6. The application must be supported by an affidavit verifying the statements in the petition.

12.
Summons for leave to serve order out of jurisdiction (*h*).

Formal parts: see post No. 881.
on the part of the plaintiff, that he may be at liberty to serve the order dated the —— day of ——, 187—, to carry on and prosecute the proceedings in this action together with a copy of the order to be made on this application on C. D., at —— or elsewhere, in the [kingdom] of ——; and that the said C. D. may have —— days to enter an appearance to and to apply to the Court to discharge or vary the said order; and that the costs of this application may be costs in the action.

13.
Motion paper for order for substituted service of order (*i*).

Formal parts: see post No. 1570.
To move on behalf of the plaintiff [*or as may be*], that he may be at liberty to serve the order, dated the —— day of ——, 187—, to carry on and prosecute the proceedings in this action together with a copy of the order to be made on this application on C. D., by [*here describe the mode of service proposed; see post* No. 1264].

14.
Summons for like (*i*).

Formal parts: see post No. 881.
on the part of the plaintiff [*or as may be*], that he may be at liberty [*continue as in form* No. 13, *ante, to end*].

15.
Affidavit in support.

[*See post* No. 1265.]

16.
Memorandum of appearance (*k*).

187—, B. No. —
In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
A. B. *v.* C. D. and others.
Enter an appearance for X. Y., who has been served with an

(*h*) See *ante*, p. 8, note (*a*). For form of order see *Shaw* v. *Wilson*, V.C. Malins at Chambers, 6 Nov. 1869, Reg. Lib. 2640.

(*i*) See Dan. Pr. 1384, and note (*m*). For form of order see *Ratcliffe v. Barnard*, M. R. 24 Feb. 1870, Reg. Lib. B. 429.

(*k*) Every person not already a party to the action who is served with an order to carry on and prosecute the proceedings in an action must enter an appearance thereto within the same time, and in the same manner, as if he had been served with a writ of summons; R. S. C. Ord. L. 5. The time for appearance to a writ of summons is within eight days after service, inclusive of the day of service; R. S. C. Ord. II. 3; App. (A), part 1, form 1; unless the person served is resident out of the jurisdiction, in which case the time for appearance is limited by the order giving leave to effect the service, and depends upon the place where the service is to be effected; R. S. C. Ord. XI.

order, dated the —— day of ——, 187—, to carry on and prosecute the proceedings in this action.

Dated this —— day of ——, 187—.

Z., Solicitor for the said X. Y.

The place of business of Z is ——.
His address for service is ——.

[*Or*, X. Y. in person.
The address of X. Y. is ——.
His address for service is ——].

17.

Notice of motion to discharge or vary order to carry on proceedings (*l*).

Formal parts: see post No. 1571.

on the part of the defendant [*Or*, of X. Y., who has been served with the order, dated the —— day of ——, 187—, to carry on the proceedings in this action] that the [said] order, dated the —— day of ——, 187—, whereby it was ordered that [*recite ordering part*].

Or, that so much of the said order, dated the —— day of ——, 187—, as directs that [*recite the part in question*].

may be discharged [*Or*, may be varied by [*specify the variation desired*]]: with costs to be paid by [*name the party who obtained the order*] to the applicant.

4; and see No. 12 *ante*); as to the place where, and the manner in which the appearance is entered, see R. S. C. Ord. XII., and *post*, pp. 146, 147, notes (*b*) and (*c*); as to the fee payable on entering an appearance, see order as to Court Fees, Oct. 1875, Sched.; Order as to Fees, April, 1876, Sched.; and note (*c*) to No. 294 *post*. As to notice of appearance see No. 295 *post*, and note (*c*) thereto. A person who is already a party to the action, and has appeared therein, need not enter any further appearance; R. S. C. Ord. L. 5; Dan. Pr. 1384, and note (*q*).

(*l*) An application to discharge an order to carry on and prosecute the proceedings may be made on the ground that the cause of action has wholly determined; or that the proceedings ought not to be carried on by or against the person by or against whom they are ordered to be carried on; or that the right to obtain the order is barred by the lapse of time; see *ante*, p. 8. In the case of a person who is under no disability, or no disability other than coverture, or who, though under disability, has already a guardian *ad litem* in the action, the application must be made within twelve days after service of the order; R. S. C. Ord. L. 6; and in the case of a person who is under a disability other than coverture and has no guardian *ad litem*, the application must be made within twelve days after the appointment of a guardian *ad litem*: *Ibid.*, rule 7; in the case where the person served is resident out of the jurisdiction, the time within which such person must apply to discharge or vary the order is limited by the order giving leave to effect service; see No. 12 *ante*. If a party who is entitled to object to the order to carry on proceedings takes part in the suit before making the objection, the objection will be waived; Dan. Pr. 1389, 1390, and note (*m*).

18. Notice of motion to dismiss action unless prosecuted by plaintiff's successors (*m*).

Formal parts : see post No. 1571.

on the part of the defendant A. B. that

[*Where the action was brought by a sole plaintiff, say :*] C. D. and E. F., the legal personal representatives [*or as may be*] of the [late] plaintiff G. H., now deceased [*or as may be*]

[*Where the action was brought by several plaintiffs, say :*] the plaintiffs J. K. and L. M. [*continuing plaintiffs*]

may be ordered within one month to obtain and serve on him an order to carry on and prosecute the proceedings in this action against the said defendant, and that in default thereof, this action may stand dismissed

[*If there are other defendants than the applicant, add :*] as against the said defendant A. B.

for want of prosecution without further order (*mm*), with costs to be paid to the said defendant (*n*).

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19. Notice of motion to dismiss action unless prosecuted against defendant's successors (*o*).

Formal parts : see post No. 1571.

on the part of P. Q. of [*residence and addition*], and R. S. of [*residence and addition*] the legal personal representatives [*or as may be*] of the [late] defendant A. B., since deceased [*or as may be*], that the plaintiffs may be ordered within one month to obtain and serve on them an order to carry on and prosecute the proceedings in this action against the said P. Q. and R. S. And that in default thereof, this action may stand dismissed.

[*If there were other defendants than A. B., add :*] as against the said P. Q. and R. S.

for want of prosecution without further order (*mm*), with costs to be paid to the said P. Q. and R. S. (*p*).

(*m*) Before judgment a defendant, or the successor in interest or liability of a defendant, cannot obtain an order to carry on the proceedings, but must apply for an order that the plaintiff or the successor in interest of the plaintiff do obtain such order, and that in default thereof the action be dismissed ; see *ante*, p. 8. Under the old practice the rule was that where there was a transmission of the interest of a sole plaintiff, or a transmission of the interest or liability of the defendant or of one of the defendants, the suit was dismissed without costs ; but where there was a transmission of the interest of one of several plaintiffs, the suit was dismissed with costs against the other plaintiffs ; Dan. Pr. 716, 717 ; but now see R. S. C. Ord. LV., under which the costs of and incident to all proceedings in the High Court are in the discretion of the Court. After judgment a defendant or the successors in interest or liability of a defendant may obtain an order to carry on the proceedings ; see *ante*, p. 8 ; and in that case an order will not be made dismissing the action unless an order to continue the proceedings be obtained within a limited time ; Dan. Pr. 716, and notes (*q*) and (*s*).

(*mm*) As to the effect of an order in this form, see *Whistler* v. *Hancock*, 3 Q. B. D. 83 ; note (*d*) to No. 739 *post*.

(*n*) As to costs, see note (*m*) *supra*.

(*o*) See note (*m*) to No. 18 *ante*.

(*p*) As to costs, see note (*m*) to No. 18 *ante*.

Section IV.—Of adding Parties by Service of Notice of the Judgment (*a*).

20.
Summons to dispense with service on particular persons (*b*).

Formal parts: see post No. 881.

on the part of the plaintiff [*or as may be; the application should be made by the party having the carriage of the judgment*], that service of notice of the judgment [*Or*, order] made in this action, and dated the —— day of ——, 187—, upon the following persons, viz., G. H., J. K., *&c.*, may be wholly dispensed with.

21.
Notice of a judgment or order (*c*).

187—. B. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge,*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Take notice that by a judgment [*Or*, order] of this Court, made in this action, and dated the —— day of ——, 187—, it was declared and adjudged [*Or*, ordered] as follows, that is to say: [*Set out the declaratory and ordering parts of the judgment or order* (*d*)].

Dated —— day of ——, 187—.

X. Y. of [*place of business*]
Solicitor for the plaintiff [*or as may be*].

To [*here set out the names and places of residence of the persons to be served with the notice*].

(*a*) As to serving notice of a judgment or order on a person who would otherwise be a necessary party to the action, see 15 & 16 Vict. c. 86, s. 42, rule 8; 31 & 32 Vict. c. 40, s. 9; *ante*, p. 3; Dan. Pr. 358, *et seq.*

(*b*) The Judge may, if he think fit, wholly dispense with service of notice of the judgment or order; Cons. Ord. XXXV. 18.

(*c*) See Dan. Pr. 362. A full copy of the judgment or order properly indorsed (see *post* No. 22), may be served instead of notice of the judgment or order; *Ibid.*

(*d*) The simplest course seems to be to set out *verbatim* in the past tense so much of the judgment or order as follows the recital of the evidence.

22.

Memorandum to be indorsed on the notice (*e*).

187—. B. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

To [*Name of person on whom the notice is to be served*].

Take notice that, from the time of the service of this notice, you will be bound by the proceedings in the above action, in the same manner as if you had been originally made a party to the action; and that you may, by an order of course, have liberty to attend the proceedings under the within-mentioned judgment [*Or*, order]; and that you may, within one month (*f*) after the service of this notice, apply to the Court to add to the judgment [*Or*, order].

23.

Summons for special directions as to mode of service (*g*).

Formal parts: see post No. 881.

on the part of the plaintiff [*or as may be; see ante* No. 20].

1. That service of notice of the judgment [*Or*, order], dated the ——, 187—, pursuant to the statute 15 & 16 Vict. c. 86, s. 42, r. 8 [*Or*, the statute 31 & 32 Vict. c. 40, s. 9], together with a copy of the order to be made hereon, upon A. B., of, *&c.*, may be deemed good service upon C. D., E. F., and G. H.

2. That publication in the "London Gazette," and in "The Times" newspaper, of notice of the said judgment [*Or*, order], and of the memorandum prescribed by the 23rd of the Consolidated Orders, r. 20, in this behalf, addressed to L. M., and of a copy of the order to be made hereon, may be deemed good service of such notice on the said L. M.; and that the time within which the said L. M. may apply to add to the said judgment [*Or*, order], may be —— months (*gg*) after the last publication of such notice.

3. That service of notice of the said judgment [*Or*, order] upon S. T., by sending such notice, indorsed with the memorandum prescribed as aforesaid, through the post-office, in a pre-paid letter,

(*e*) See Cons. Ord. XXIII. 20. For form of memorandum to be used where the service is on an infant or person of unsound mind, see *ibid.*; and *post* Nos. 83, and 150.

(*f*) See note (*k*) to No. 24 *post*.

(*g*) In every case where the person to be served with notice of the judgment or order is an infant or a person of unsound mind not so found, the directions of the Judge as to such service must be obtained; Cons. Ord. VII. 5; regulations as to business, Aug. 1857, rule 7; for forms of application for such directions, and of affidavit in support, see *post* Nos. 81 and 82 in the case of infants, and Nos. 148 and 149 in the case of persons of unsound mind. In any case the Judge may dispense with service of the notice or may order any substituted service or notice by advertisement or otherwise in lieu of service; Cons. Ord. XXXV. 18; Dan. Pr. 360, 361.

(*gg*) See note (*k*) to No. 24 *post*.

addressed to him at ——, may be deemed good service of such notice on the said S. T. (*h*); and that the time within which the said S. T. may apply to add to the said judgment [*Or*, order] may be —— months (*gg*) after the service of such notice.

4. That service of notice of the said judgment [*Or*, order] on W. Y., may be dispensed with.

24. Motion paper or summons for leave to serve the notice out of the jurisdiction (*i*).

Formal parts : see post No. 1570, *or* No. 881.

on the part of the plaintiff [*or as may be ; see ante* No. 20], that he may be at liberty to serve notice of the judgment [*Or*, order] in this action, dated the ——, 187—, upon A. B., at [*State where ; as thus :*] Paris, or elsewhere in France.

[*Or, in the case of substituted service, say :*] upon A. B., by serving the same upon [*State whom, and where ; as thus :*] his mother E. B., at the city of F., in the county of S., in the State of O., in the United States of America, or elsewhere in the said United States.

[*If the month allowed by Cons. Ord. XXIII.*, 18, *is deemed insufficient, add :*] and that the time to be specified in the indorsement on such notice, within which the said A. B. may apply to add to the said judgment [*Or*, order], may be (six weeks) after such service (*k*).

25. Affidavit in support (*l*).

Formal parts : *see post* No. 693.

1. A. B., on whom notice of the judgment [*Or*, order] in this action, dated the ——, 187—, is required to be served, as being interested in the matters in question in this action [*State shortly how ; as thus :*] under the trusts of the indenture, dated the ——, 187—, in the pleadings mentioned, is now residing at [*State where ;*

(*gg*) See note (*k*) to No. 24 *post*.

(*h*) For orders for service through the post office, see *St. John* v. *Harrison*, M. R. at Chambers, 15 Nov. 1866, Reg. Lib. B. 2269; *Lawson* v. *Halford*, M. R. at Chambers, 22 Nov. 1869, Reg. Lib. B. 3117; see also *Burton* v. *Shaw*, 10 L. T. N. S. 292, V. C. W.; and Ord. 11 Nov. 1862, rule 63.

(*i*) See Cons. Ord. XXXV. 18; Dan. Pr. 360. For form of affidavit in support, see *post* No. 25. For orders in like case, see *Login* v. *Princess of Coorg*, M. R. at Chambers, 19 Mar. 1861, Reg. Lib. B. 1898; *Hasluck* v. *Hasluck*, V.-C. W. at Chambers, 9 June, 1863, Reg. Lib. A. 1084; *Gates* v. *Buckland*, V.-C. S. at Chambers, 14 Mar. 1865, Reg. Lib. A. 480.

(*k*) See Cons. Ord. XXIII. 18; *Strong* v. *Moore*, 22 L. J. Ch. 917; and note (*f*) to No. 36 *post*. As to the time to be named, see note (*m*) to No. 213 *post*. The time mentioned in the memorandum endorsed on the notice must accord with the direction in the order. For form of memorandum, see No. 22 *ante*.

(*l*) As to the contents of this affidavit, see Dan. Pr. 360.

as thus:] Paris, in France, out of the jurisdiction of this honourable Court. He is not an infant, nor of unsound mind [*or as may be*].

2. [*Show means of knowledge.*]

26.

Letter enclosing notice of judgment to a person directed to be served through the post office (*m*).

[*Address and date.*]

To S. T., of ——.

Sir,

In an action of B. *v.* D., now pending in the Chancery Division of the High Court of Justice, for the administration of the estate of W. A., late of, *&c.*, deceased [*or as may be*], the Master of the Rolls [*Or*, Vice-Chancellor ——], has, by an order dated the ——, 187—, directed notice of the judgment [*Or*, order] therein, dated the —— of ——, 187—, to be transmitted to you, as being one of the next of kin of the said W. A. [*or as may be*]. I beg, therefore, as the plaintiff's solicitor, to enclose you such notice (marked A.), and also a copy of the said order, dated the ——, 187— [*Order directing service*]; and have to call your attention to the memorandum indorsed on the notice.

As I shall have occasion to satisfy the Judge that the notice and copy order have reached you, I shall feel obliged by your signing and returning to me, through the post-office, the acknowledgment to that effect, which you will find written in the fold of the copy enclosed (marked B.) of the notice (*n*).

I am, &c.,

X. Y.

27.

Acknowledgment of the receipt of the notice (*o*).

[*Place and date.*]

I, S. T., of, *&c.*, hereby acknowledge to have received, through the post-office, on the ——, 187—, a notice with an indorsement thereon, in the form or to the effect of the within-written notice and of the indorsement thereon, and also a document purporting to be a copy of an order made on the —— of ——, 187—, in the within-mentioned action, directing such notice to be transmitted to me.

S. T.

(*m*) See Dan. Pr. 361.

(*n*) It is advisable to send a form of acknowledgment for signature.

(*o*) The form assumes that the acknowledgment will be written on a copy of the notice and indorsement. Where it is not so intended, the acknowledgment should be varied in form accordingly; and made sufficiently explicit.

28.
Affidavit of service of the notice.

Formal parts: see post No. 693.

[*Where a copy is served as notice:*] 1. On the —— of ——, 187—, I served A. B. with notice of the judgment [*Or*, order] made in this action, dated the —— of ——, 187—: which said judgment [*Or*, order] is now produced and shown to me (*p*), and is marked A.: by delivering to and leaving with the said A. B.,

[*Or if served on a substitute, say:*] with C. D., the person named in the order dated the —— of ——, 187—, hereinafter mentioned,

at [*State where*], a true copy of the said judgment [*Or*, order].

[*Or, where a notice is served:*] 1. On the —— of ——, 187—, I served A. B. with a notice in writing of the judgment [*Or*, order] made in this action, dated the —— of ——, 187—, and of which notice the paper writing, marked A., now produced and shown to me (*q*) is a true copy,

[*Or if a copy is not exhibited* (*r*), *say:*] and which notice was in the words and figures following, that is to say [*set out the notice verbatim*],

by delivering such notice to, and leaving the same with, the said A. B.,

[*Or if served on a substitute, say:*] with C. D., the person named in the order dated the —— of ——, 187—, hereinafter mentioned,

at [*State where*].

[*In every case:*] 2. The copy [*Or*, The notice] served as aforesaid of the said judgment [*Or*, order] had, at the time of such service, a memorandum indorsed thereon in the words following, that is to say [*Set forth a copy of the memorandum*].

[*Or if the judgment or order, or a copy of the notice, is exhibited, with a copy of the memorandum indorsed, say, after* thereon:] and of which memorandum, the memorandum marked B., now produced and shown to me (*q*), and indorsed on the said exhibit marked A., is a true copy.

[*Where service is made under a special order:*] 3. At the time of the aforesaid service of the said copy [*Or*, notice] of the said judgment [*Or*, order], I also served the said C. D. with the order made in this action dated the —— of ——, 187—, now produced and shown to me (*s*), and marked C., by delivering a true copy of the said order to, and leaving the same with, the said C. D.; and I, at the same time, showed to him the said original order, duly passed and entered.

(*p*) Exhibit it. For form of memorandum, see *post* No. 723. If not exhibited the mandatory part must be recited; see *post* No. 1266.

(*q*) Exhibit it. For form of memorandum thereof, see *post* No. 723.

(*r*) It seems to be usual and advisable to exhibit a copy of the notice, instead of setting out its contents in the affidavit.

(*s*) Exhibit it. For form of memorandum thereof see *post*, No. 723. If not exhibited, the mandatory part must be recited; see *post* No. 1266.

[*Identity of individual served:*] 4. A. B., hereinbefore named, is one of the residuary legatees of G. H., the testator in the proceedings in this action named [*or as may be*] (*t*).

5. [*Show means of knowledge.*]

29.

Affidavit of service of the notice on numerous persons.

Formal parts: see post No. 693.

1. On the respective days mentioned in the first column of the schedule hereto, I served the several persons whose names are set forth in the second column of the said schedule, opposite to the said respective days, with a notice of the judgment [*Or*, order] made in this action, dated the —— of ——, 187—: which said judgment [*Or*, order] is now produced and shown to me (*v*), and is marked A.: by delivering a true copy of the said judgment [*Or*, order] to, and leaving the same with, each of the persons whose names are set forth in the third column of the said schedule, at the respective places set forth in the fourth column thereof, opposite to their said respective names (*w*).

2. Each of the said copies had, at the time of such service thereof as aforesaid, indorsed thereon a memorandum addressed to the person on or for whom respectively I so served the same, and of which memorandum the paper writing marked B., now produced and shown to me (*v*), and indorsed on the said exhibit marked A., is a true copy, except that the said address is omitted in such exhibited copy.

3. The several persons served as aforesaid are interested in the matters in question in this action in the manner set forth in the fifth column of the said schedule, opposite to their said respective names (*x*).

4. [*Show means of knowledge.*]

[*Where service is made under a special order, add:*] 5. At the time I served the said copy as aforesaid on L. J. and J. T., in the said schedule named, I served each of them with the order made in this action, dated the —— of——, 187—, now produced and shown to me (*v*), and marked C. [*Order directing substituted service*], by delivering a true copy of the said order to, and leaving the same with, each of them the said L. J. and J. T.: and I at the same time produced and showed to each of them the said original order, duly passed and entered.

[The Schedule

(*t*) The identity of the person served with the person required to be served must be established, either by the affidavit of the person who served the notice (if he is competent to swear thereto), or in some other manner.

(*v*) Exhibit it. For form of memorandum thereof, see *post* No. 723.

(*w*) If a notice, instead of a copy, is served, vary the affidavit, as in No. 28 *ante*.

(*x*) See *ante* No. 28, n. (*t*), as to establishing the identity of the parties served.

THE SCHEDULE ABOVE REFERRED TO.

Date of service.	Name of person served with notice.	Name and description of person on whom notice served.	Place of service.	Nature of interest of person served.
1870, October 20.	John Denn . .	The said John Denn, personally.	No. 500, Fleet Street, in the City of London.	As two of the residuary legatees named in the will of D. B., the testator in the proceedings in this action named.
,, November 1.	Richard Fenn . .	George Fenn, son of the said Richard Fenn, personally.	The dwelling-house of the said Richard Fenn, situate No. 80, Lincoln's Inn Fields, in the county of Middlesex.	
,, ,, 2.	Ann Doe, Spinster . .	Lewis Jones, in the Order dated ——, 187—, named, personally.	Esher, in the County of Surrey.	As children of X. Y., deceased, another of the said residuary legatees.
,, ,, 3.	Mary Roe, Widow . .	James Thompson, in the Order dated ——, 187—, named, personally.	Hampstead, in the County of Middlesex.	

30.

Affidavit of service of notice through the post (*y*).

Formal parts: see post No. 693.

1. I have, in the manner hereinafter mentioned, served S. T., in the order made in this action dated the —— of ——, 187— [*Order directing special mode of service*] named, with notice of the judgment [*Or*, order] made in this action and dated the —— of ——, 187—.

2. On the —— of ——, 187—, I put into the post office receiving house, situate No. ——, in —— street, in the (county) of ——, a letter duly addressed thus: [*Set out the address*]; and with the proper postage stamp affixed thereto, as a pre-paid letter (*z*); and of which letter the paper writing marked A. now produced and shown to me (*a*) is a true copy.

3. The said letter, at the time I posted the same as aforesaid, contained a true copy, as passed and entered, of the order in this action, dated the —— of ——, 187—, now produced and shown to me (*a*), and marked B. [*Order directing special service*], and also a notice of the said judgment [*Or*, order] dated the —— of ——, 187—, with a memorandum indorsed thereon addressed to the said S. T., and of which two documents the notice marked C., and memorandum indorsed thereon marked D., now respectively produced and shown to me (*a*), are true copies; and also contained the acknowledgment, marked E. (*a*), now appearing in the fold of the said notice, except that such acknowledgment was then undated and unsigned.

4. The said exhibited documents, marked C. D., and E., were received by me on the —— of ——, 187—, through the post office.

5. Under the circumstances hereinbefore stated, I verily believe that notice of the said judgment [*Or*, order], with such indorsement thereon as aforesaid, and a copy of the said order of the —— of ——, 187— [*Order directing service*], were duly received by the said S. T., at ——, aforesaid, on or about the —— of ——, 187—.

31.

Motion paper or summons for leave to enter memorandum of service, where service irregular (*b*).

Formal parts: see post No. 1570 *or* 881.

on the part of the plaintiff, that the Record and Writ Clerk may be directed to enter a memorandum of service of notice of the judgment [*Or*, order] dated the ——, 187—, upon A. B., &c., on the accompanying affidavit of C. D., filed ——, 187—, of such service.

(*y*) See *ante* Nos. 26 and 27.

(*z*) See Ord., 11 Nov. 1862; Sched. 3, No. 27.

(*a*) Exhibit same. For form of memorandum thereof, see *post* No. 723.

(*b*) When service has been effected, the person having the carriage of the judgment or order must enter a memorandum of service with the Record and

32.

Præcipe for entry of a memorandum of service of notice (*c*).

187—. B. No. —.

In the High Court of Justice,
Chancery Division.
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Enter memorandum of service of notice of the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—, upon the undermentioned persons, viz. :—

Name of Party served.	Date of Service.
John Denn	1870, October 20.
Richard Fenn	,, November 1.

Dated this —— day of ——, 187—.

[*Name, &c., of solicitor or party entering the memorandum : see post* No. 92.]

33.

Certificate of such entry having been made (*d*).

187—. B. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge*].
B. *v.* D.

These are to certify that a memorandum of service of notice of the judgment [*Or*, order] made in this action and dated the ——

Writ Clerk ; Cons. Ord. XXIII. 19. If the service has not been effected in the ordinary manner, and in consequence the Record and Writ Clerk refuses to enter the memorandum of service, an application should be made to the Court or a judge in Chambers for a direction to the Record and Writ Clerk to enter the memorandum ; Dan. Pr. 362. No order upon the application is drawn up, but the registrar or the Chief Clerk will endorse the direction on the affidavit of service ; *Ibid.*

(*c*) As to entering a memorandum of service with the Record and Writ Clerk, see Cons. Ord. XXIII. 19 ; *supra*, note (*b*) to No. 31. An office copy of the affidavit of service and any exhibits therein referred to must be left with the *præcipe* for examination. As to the effect of the service, see Dan. Pr. 364.

(*d*) The solicitor having the carriage of the judgment or order must obtain from the Record and Writ Clerk a certificate of his having entered a memorandum of service, and must leave at Chambers a copy certified by such solicitor of such certificate ; Regulations, Aug. 1857, r. 8. A fee is payable for the certificate of 4*s.* on the higher scale and 1*s.* on the lower scale, by means of a stamp impressed upon or adhesive to the certificate ; Ord. as to Court fees, Oct. 1875, Sched. ; Ord. as to fees, April, 1876, Sched. ; Wilson, 506, 522.

day of ——, 187—, upon the undermentioned persons, viz.: [*Set out the names*] was duly entered on the —— day of ——, 187—, as appears by my book. Dated this —— day of ——, 187—.

X. Y.,
C. R. & W.

34.

Motion paper, for leave for an adult to attend proceedings (*e*).

Formal parts: see post No. 1570.

To move on behalf of L. M., of [*residence and addition*]: who has been served, pursuant to the 15 & 16 Vict. c. 16, s. 42, r. 8 [*Or*, the 31 & 32 Vict. c. 40, s. 9], with notice of the judgment [*Or*, order] made in this action and dated the ——, 187—: that he may be at liberty to attend the proceedings thereunder.

35.

Petition of course for the like (*e*).

Formal parts: see post No. 1576.

The humble petition of L. M., of [*residence and addition*]. Showeth as follows:

1. Your petitioner has been served with notice of the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—.

2. Your petitioner claims to be interested in the subject matter of this action, and desires to attend the proceedings under the said judgment [*Or*, order].

Your petitioner therefore humbly prays, that he may be at liberty to attend the proceedings under the said judgment [*Or*, order] accordingly.

And your petitioner will ever pray, *&c.*

36.

Summons to enlarge time to apply to add to the judgment or order (*f*).

Formal parts: see post No. 881.

on the part of G. H., who by an order dated the —— day of ——, 187—, has liberty to attend the proceedings under the judgment

(*e*) If any person served with notice of a judgment or order desires to attend the proceedings thereunder, he may obtain an order giving him leave to do so upon motion or petition of course; 15 & 16 Vict. c. 86, s. 42, rule 8; 31 & 32 Vict. c. 40, s. 9. The solicitor obtaining such order must leave a copy thereof, certified by him to be a correct copy, at Chambers; Regulations, Aug. 1857, rule 8; and should also serve a copy on the solicitors of all parties on the record or having leave to attend the proceedings; Dan. Pr. 363. An infant or a person of unsound mind attends the proceedings by his guardian *ad litem*, and it is the practice to obtain an order appointing a guardian and giving the person served liberty to attend by such guardian; for forms of application in such cases, see *post* Nos. 84, 85, 151, 152. No appearance in the action need be entered by a person served with notice of the judgment or order, or who has obtained leave to attend the proceedings; Dan. Pr. 363. As to the costs of parties attending, see Dan. Pr. 364.

(*f*) Any person who has been served with notice of a judgment or order may apply to the Court to add to such judgment or order; 15 & 16 Vict

[*Or*, order] dated the —— day of ——, 187—, that the time limited by the 23rd of the Consolidated General Orders, rule 18, for the applicant to apply to the Court to add to the said judgment [*Or*, order] may be enlarged to the —— day of ——, 187—.

37.

Formal parts: see post No. 881.

on the part of G. H., who [*&c., as in* No. 36 *ante*], that, notwithstanding the time limited by the 23rd of the Consolidated General Orders, rule 18, has expired, the applicant may be at liberty to apply to the Court to add to the said judgment [*Or*, order].

Summons for leave to apply to add to the judgment or order, notwithstanding time has expired (*f*).

38.

[*Same as* No. 860 *post.*]

Summons to add to judgment or order (*g*).

39.

Formal parts: see post No. 1571.

on the part of G. H., who [*&c., as in* No. 36 *ante*], that he may be at liberty to serve, and to set down for hearing, a notice of motion by way of appeal from the said judgment [*Or*, order], dated the —— day of ——, 187—.

Or, from so much of the said judgment [*Or* order], dated the —— day of ——, 187—, as directs [*State what*].

Notice of motion by party served with notice of judgment or order for leave to appeal therefrom (*h*).

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c. 86, s. 42, rule 8; 31 & 32 Vict. c. 40, s. 9. The application must be made within one month after service; Cons. Ord. XXIII. 18. As to mentioning a longer period in the indorsement where the notice is served out of the jurisdiction, see *ante* No. 24, and note (*k*) thereto.

(*f*) See note (*f*) to last form.

(*g*) As to adding to a judgment or order, see 15 & 16 Vict. c. 86, s. 42, rule 9; 31 & 32 Vict. c. 40, s. 9; *ante*, note (*f*) to No. 36. As to what accounts and enquiries may be thus added, see Dan. Pr. 1089.

(*h*) See Dan. Pr. 364, 1330—1332, 1348; note (*d*) to No. 1434 *post.*

Section V.—Of Appointing or Dispensing with a Representative of a Party or Parties interested.

(1.) *Under the Statute* 15 & 16 *Vict. c.* 86, *s.* 44 (*a*).

40.

Motion paper for appointment of representative (*b*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*or as may be*] that the defendant A. B.

Or, A. B., of [*residence and addition*],

may be appointed to represent the estate of C. D.,

Or, the respective estates of C. D. and E. F.,

deceased, in the plaintiff's statement of claim named [*or as may be*], for the purposes of this action.

(*a*) By the 15 & 16 Vict. c. 86, s. 44, applied to proceedings in the High Court of Justice by the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 76, it is provided that if in any proceeding before the Court it shall appear to the Court that any deceased person, who was interested in the matters in question, has no legal personal representative, the Court may either proceed in the absence of any person representing the estate of such deceased person, or appoint some person to represent such estate for all the purposes of the proceeding, on such notice to such person or persons (if any) as the Court shall think fit, either specially, or generally by public advertisement; and that the order so made by the Court, and any orders consequent thereon, shall bind the estate of such deceased person, in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person, and such legal personal representative had been a party to such proceeding, and had duly appeared and submitted his rights and interests to the protection of the Court. An order under this section is in the discretion of the Court, and an order will only be made where there is some difficulty in obtaining full representation of the deceased person, and where there are other parties to the action having the same interest as the deceased person; but the Court will not allow the whole adverse interest to be represented; nor will an order be made under this section where the representative appointed would have to be active in the execution of the decree which the Court is asked to make; nor where there is a personal responsibility attached to the position of representative; nor where a general administration is sought of the estate to be represented; Dan. Pr. 180, 181, 182; Morgan, pages 190, 191, 192. As to the proper person to be appointed representative, see Dan. Pr. 182, 183; Morgan, 192; the Court will not appoint a person against his will; *Ibid.* The section extends to all proceedings and not merely to actions; Dan. Pr. 182, and note (*c*).

(*b*) See note (*a*), *supra*. The application is usually by *ex parte* motion: but where, after judgment, the representation is required for the purpose of proceedings in Chambers, the application may be made there by *ex parte*

41. Notice of motion or summons for the like (*b*).

Formal parts: see post No. 1571, *or* No. 881.
on the part of the plaintiff [*Continue, as in* No. 40 *ante, to the end*].

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42. Motion paper to dispense with a representative (*b*).

Formal parts: see post No. 1570.
To move on behalf of the plaintiff [*or as may be*], that this action, and the proceedings therein, may be carried on and prosecuted, notwithstanding the absence of any person representing the estate of A. B.,
Or, the respective estates of A. B. and C. D.,
deceased, in the plaintiff's statement of claim named [*or as may be*].

43. Summons for the like (*b*).

Formal parts: see post No. 881.
on the part of the plaintiff [*Proceed, as in* No. 42 *ante, to the end*].

(2.) *Under the Rules of the Supreme Court, Ord. XVI., rule 9 a* (*c*).

44. Motion paper for appointment of representative.

Formal parts: see post No. 1570.
To move on behalf of the plaintiff [*or as may be*], that A. B. of [*residence and addition*], may be appointed to represent the heir-

summons; Dan. Pr. 183, and notes (*f*) and (*g*). Before the order is drawn up, notice should be given to the person who is entitled to take out administration to the deceased; Dan. Pr. 183. For forms of order, see *Hele* v. *Lord Bexley*, 15 Beav. 340; *Re Harding, Read* v. *Harding*, M. R. at Chambers. 9 Mar., 1864, Reg. Lib. A. 560; *Re Blithman*, M. R., 22 June, 1865, Reg. Lib. A. 1243; Seton, ed. 3, p. 1178.

(*b*) See note (*b*) to No. 40 *ante*.

(*c*) By the Rules of the Supreme Court, Ord. XVI. rule 9 *a* (R. S. C., June, 1876, rule 7), it is provided that in any case in which the right of an heir at law, or the next of kin, or a class, shall depend upon the construction which the Court may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir at law, next of kin, or class, and the Court shall consider that in order to save expense or for some other reason, it will be convenient to have the question or questions of construction determined before such heir at law, next of kin, or class, shall have been ascertained, by means of inquiry or otherwise, the Court may appoint some one or more person or persons to represent such heir at law, next of kin, or class, and the judgment of the Court in the presence of such person or persons, will be binding upon the party or parties, or class, so represented. In *Re Peppitt's Estate, Chester* v. *Phillips*, 4 Ch. D. 230, an order was made under this rule on a motion for judgment.

at-law [*Or*, the next of kin] of C. D., in the plaintiff's statement of claim named [*or as may be*], for the purpose of obtaining the judgment of the Court upon the questions arising upon the construction of the will of the said C. D. [*or as may be*].

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45. Notice of motion or summons for the like.

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that A. B. [*Continue as in* No. 44 *ante, to the end*].

CHAPTER II.

PROCEEDINGS BY AND AGAINST PARTICULAR PERSONS.

SECTION I.—INFANTS.

(1) *Plaintiffs* (*b*).

46.

Authority by next friend of an infant to use his name as such (*c*).

I, A. B., of [*residence and addition*], authorise Mr. C. D., of [*place of business*], to commence and prosecute an action in

Or, to make an application to

the Chancery Division of the High Court of Justice, on behalf of E. F., an infant, for [*State succinctly the object of the proposed proceeding; as thus :*] the administration of the estate of X. Y., deceased, and to use my name in such action [*Or,* proceeding], as the next friend of the said E. F.

Dated this —— day of ——, 187—.

47.

The like by indorsement (*c*).

I, the within-named A. B., authorise Mr. C. D., of [*place of business*], to issue this writ of summons [*or as may be*], and to prosecute the action [*Or,* proceeding] to be commenced thereby, and to use my name as the next friend of the within-named E. F. therein.

Dated this —— day of ——, 187—.

(*b*) Infants may sue as plaintiffs by their next friends in the manner formerly practised in the Court of Chancery; R. S. C. Ord. XVI. 8. Any person may commence an action as next friend of an infant; Dan. Pr. 67, 73.

(*c*) Before the name of any person is used as the next friend of an infant, he must sign a written authority to the solicitor for that purpose, which authority must be filed when the writ of summons is issued; 15 & 16 Vict. c. 86, s. 11.

48.
Authority by new next friend to use his name and to continue proceedings (*d*).

187—. F. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between E. F., by A. B., his next friend . Plaintiff.
and
L. M. . . . . Defendant.

I, G. H., of [*residence and addition*], consent to be appointed, and to act as the next friend of the plaintiff, E. F., in this action, in the place of A. B. And I authorise Mr. C. D., of [*place of business*], to use my name as such next friend, and to continue the prosecution of this action.

49.
Notice of motion or summons for removal of a next friend and approval of another (*e*).

Formal parts: see post No. 1571 *or* 881.

on the part of the infant plaintiff, by G. H., of [*residence and addition*], his next friend for the purpose of this application (*f*), that A. B., the next friend of the plaintiff in this action, may be removed, and that the said G. H., or some other proper person, may be approved as and deemed to be such next friend in lieu of the said A. B. And that

[*If before judgment, say:*] the writ of summons and subsequent proceedings in this action may be amended, by inserting the name of the said G. H., or other person to be approved as aforesaid, as the next friend of the plaintiff, instead of the name of the said A. B.

[*If after judgment, say:*] the said G. H., or other person to be approved as aforesaid, may be named in all future proceedings in

(*d*) Before appointing a new next friend, the Court or Judge requires to be satisfied of his willingness to act; and an authority signed by such next friend must be produced and filed; Dan. Pr. 76.

(*e*) The Court will, on sufficient ground, remove a next friend; Dan. Pr. 73; where an administration action was commenced on behalf of infants by a stranger as their next friend, without the knowledge of the infant's father, on the application of the father the stranger was removed, and the father substituted as next friend; *Woolf* v. *Pemberton*, 25 W. R. 873. The application is made by motion or summons on notice to the next friend, and also to the defendants; it should be supported by an affidavit of the grounds for the removal of the next friend, and of the fitness to act of the proposed substitute; and the consent of the latter to act must be shown. For form of affidavit, see *post* No. 50. For form of consent to act, see *ante* No. 48. For forms of order, see *Morgan* v. *Morgan*, V.-C. S. at Chrs., 16 Dec., 1869, Reg. Lib. B. 3145; *Chapman* v. *Collins*, V.-C. B. at Chrs., 18 July, 1870, Reg. Lib. A. 2083.

(*f*) On every application on behalf of an infant a next friend must be named for the purpose of the application; Dan. Pr. 76.

this action as the next friend of the plaintiff, in lieu of the said A. B.

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50. Affidavit of fitness of new next friend (*ff*).

Formal parts: see post No. 693.

1. The above-named C. H., the plaintiff in this action, is still an infant under the age of twenty-one years.

2. I know and am well acquainted with G. H. of [*residence and addition*], the person proposed to be appointed the next friend of the plaintiff, by whom he may continue the prosecution of this action.

3. The said G. H. is [*State degree of relationship to, or connection with the family of, the infant; as thus:*] the father of the said C. H., and has no interest in the matters in question in this action, and in my judgment and belief the said G. H. is a fit and proper person to be appointed such next friend as aforesaid.

4. [*Show means of knowledge.*]

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51. Summons, to substitute a next friend for one desirous to retire (*g*).

Formal parts: see post No. 881.

on the part of the infant plaintiff by A. B. his next friend, that he may be at liberty

[*If before judgment, say:*] to amend the writ of summons and subsequent proceedings in this action, by inserting the name of C. D. of [*residence and addition*], as his next friend, in lieu of the said A. B., who is desirous to retire.

[*Or if after judgment, say:*] to name C. D. of [*residence and addition*], as his next friend, in all future proceedings in this action, in lieu of the said A. B., who is desirous to retire.

(*ff*) The plaintiff's solicitor must swear that the proposed next friend has no adverse interest; where he is unable to depose to the other facts, another deponent must be joined, and the affidavit varied accordingly.

(*g*) In general, a next friend will not be allowed to retire at his own request, without giving security for the costs already incurred; Dan. Pr. 74; as to the mode of giving security for costs, see *post*, Chap. XXIX., p. 969. In some cases, the Court has refused to allow a next friend to retire without an inquiry whether it was for the benefit of the infant; Dan. Pr. 75. The application is made by summons on notice to the defendants, and should be supported by an affidavit of the circumstances and of the fitness of the proposed substitute; Dan. Pr. 75. For form of affidavit, see *ante* No. 50. The consent of the proposed substitute to act must be shown; for form of consent, see *ante* No. 48. For form of order, see Seton, ed. 8, 1252, No. 6.

52.
Motion paper to appoint a new next friend in lieu of one deceased (*h*).

Formal parts: see post No. 1570.

To move on behalf of the infant plaintiff, by A. B. of [*residence and addition*], his next friend for the purpose of this application (*i*), that he may be at liberty

[*If before judgment, say:*] to amend the writ of summons and subsequent proceedings in this action by inserting the name of the said A. B. as his next friend, in lieu of C. D. now deceased.

[*Or if after judgment, say:*] to name the said A. B. as his next friend, in all future proceedings in this action, in lieu of C. D. now deceased.

An affidavit in support accompanies.

53.
Petition of course for the like (*h*).

Formal parts: see post No. 1576.

The humble petition of the infant plaintiff, by A. B. of [*residence and addition*], his next friend for the purpose of this application (*i*).

Showeth as follows:

[*If before judgment, say:*] 1. Your petitioner, by C. D. his next friend, issued a writ of summons in this action against the defendants, who have appeared thereto [*State the subsequent proceedings in, and the present position of, the action; as thus:*] and a statement of claim has been delivered, but no statement of defence has yet been put in [*or as may be*].

[*If after judgment, say:*] 1. Your petitioner, by C. D. his next friend, issued a writ of summons in this action against the defendants; and judgment was given therein on the —— of ——, 187—, whereby certain accounts and inquiries were directed to be taken and made; but the Chief Clerk has not yet made his certificate of the result thereof [*or as may be*].

2. The said C. D. died on the ——, 187—, and your petitioner is desirous that the said A. B. may be approved as his next friend, in lieu of the said C. D.

Your petitioner therefore humbly prays, that he may be at liberty [*Continue as in* No. 52 *ante to the end*].

And your petitioner will ever pray, *&c.*

(*h*) If the next friend dies, it is necessary to obtain an order appointing a new next friend; the order may be obtained on motion or petition of course, supported by an affidavit of the death, and of the fitness of the proposed new next friend; Dan. Pr. 75. For form of affidavit, see *ante* No. 50. The consent of the proposed new next friend to act must be shown; for form of consent, see *ante* No. 48. For form of order, see *Barrow* v. *Hyslop*, M. R. 4 Dec., 1869, Rolls' Lib.; *Symons* v. *Symons*, V.-C. M. at Chambers, 17 March, 1870, Reg. Lib. B. 709; Seton, ed. 3, 1252, No. 5. If the plaintiff neglects to obtain the order, the defendant may apply; Dan. Pr. 76; No. 57 *post*.

(*i*) See note (*f*) to No. 49 *ante*.

54.

Notice of motion or summons to appoint a next friend in lieu of one incapacitated or removed (*k*).

Formal parts : see post No. 1571 *or* 881.

on the part of the infant plaintiff, by A. B. of [*residence and addition*], his next friend for the purpose of this application (*l*), that he may be at liberty

[*If before judgment, say :*] to amend the writ of summons and subsequent proceedings in this action, by inserting the name of the said A. B. as his next friend, in lieu of C. D. who is incapacitated from acting [*Or*, who, by an order, dated the —— of ——, 187—, has been removed].

[*Or, if after judgment, say :*] to name the said A. B. as his next friend, in all future proceedings in this suit, in lieu of C. D. who is incapacitated [*&c., as above*].

55.

Notice of motion to dismiss action where no next friend named (*m*).

Formal parts : see post No. 1571.

on the part of the defendants, that this action may be dismissed with costs to be paid by Mr. C. D., the plaintiff's solicitor, to the defendants, on the ground that no next friend has been named on behalf of the plaintiff therein, who is an infant.

56.

Notice of motion by defendants, to remove next friend and appoint a new one (*n*).

Formal parts : see post No. 1571.

on the part of the defendants, that A. B., the next friend of the plaintiff in this action, may be removed, and that some fit and proper person may be approved as the next friend of the plaintiff ; and that

[*If before judgment, say :*] the writ of summons and subsequent proceedings in this action may be amended accordingly.

[*If*

(*k*) Where a next friend becomes incapable of acting, or is removed, the plaintiff should obtain an order appointing a new next friend ; the order may be obtained on motion or summons on notice to the defendants ; Dan. Pr. 75, 76. The application should be supported by an affidavit of the circumstances, and of the fitness of the proposed new next friend ; Dan. Pr. 75 ; for form of affidavit, see *ante* No. 50. The consent of the proposed new next friend to act must be shown ; for form of consent, see No. 48 *ante*. For form of order, see Seton, ed. 3, 1252, No. 6. If the plaintiff neglects to obtain the order the defendant may apply ; Dan. Pr. 76 ; see *post* No. 57.

(*l*) See note (*f*) to No. 49 *ante*.

(*m*) If an action is commenced in the name of an infant plaintiff without a next friend, the defendant may move to have it dismissed with costs, to be paid by the solicitor ; Dan. Pr. 67.

(*n*) As to an application by the defendant to remove a next friend and appoint a new one, see Dan. Pr. 69, 70. The application should be supported by an affidavit of the circumstances.

[*If after judgment, say :*] the person to be approved as aforesaid may be named in all future proceedings in this action as the next friend of the plaintiff, in lieu of the said A. B.

57.

Notice of motion by defendant, that a new next friend may be approved for plaintiff (*o*).

Formal parts : see post No. 1571.

on the part of the defendant, that a proper person may be approved as next friend of the plaintiff, in lieu of A. B., who has died [*Or*, become incapable of acting ; *Or*, been removed] ; and that

[*If before judgment, say :*] the writ of summons and subsequent proceedings in this action, may be amended by inserting the name of such person, as next friend of the plaintiff, in lieu of the said A. B.

[*If after judgment, say :*] such person may be named as next friend of the plaintiff, in all subsequent proceedings in this action, in lieu of the said A. B.

58.

Notice of motion for dismissal of, or inquiry as to, a single suit by an infant (*p*).

Formal parts : see post No. 1571.

on behalf of the infant plaintiff, by C. D. of [*residence and addition*], his next friend for the purpose of this application (*q*).

Or, on behalf of the defendant E. F.,

that this action may be dismissed ; and that G. H., the next friend of the plaintiff therein, may be ordered to pay to the defendant his costs of and occasioned by this action, and his [*Or*, and to the defendant and the said C. D. their] costs of this application :

Or that an inquiry may be made whether this action has been properly instituted ; and whether it will be fit and proper, and for the benefit of the infant plaintiff, that the same should be further prosecuted ; and if so, whether the said G. H. is a proper person to be the plaintiff's next friend ; and if he is not, that some proper person may be approved as such next friend in his stead.

And that all other proceedings in this action may be stayed, in the meantime.

(*o*) Where the next friend dies or becomes incapable to act or is removed, and the plaintiff's solicitor omits within a reasonable time to take steps to get a new next friend appointed, the defendant may apply to the Court by motion on notice, for an order directing the approval of a new next friend, and for the insertion of his name as such in the proceedings ; Dan. Pr. 76.

(*p*) The Court will, upon the application of the defendant, or of any person acting as next friend of the plaintiff for the purpose of the application, where a case is shown that the action is not for the infant's benefit, or is instituted from improper motives, either dismiss the action with costs, or direct an inquiry as to the propriety of the suit ; Dan. Pr. 69.

(*q*) See note (*f*) to No. 49 *ante*.

59.
Motion paper for inquiry which of two actions is for infant plaintiff's benefit (*r*).

Titles of both actions; other formal parts: see post No. 1570.
To move on behalf of the above-named infant plaintiff by C. D., his next friend in the first [*Or*, second] mentioned action,

Or, on behalf of the defendant,

that an inquiry may be made which of the above-mentioned actions it will be most for the benefit of the said infant plaintiff to prosecute; and that in the meantime all other proceedings in these actions may be stayed.

Both actions are for the same purpose; no judgment has been made in either; and neither is in the paper for trial.

60.
Notice of motion for the like (*s*).

Titles of both actions; other formal parts: see post No. 1571.
on the part of the above-named infant plaintiff by C. D., his next friend in the first [*Or*, second] mentioned action,

Or, on the part of the defendant,

that an inquiry may be made which of the above-mentioned actions it will be most for the benefit of the infant plaintiff to prosecute; and that in the meantime all other proceedings in these actions may be stayed.

61.
Notice of motion to stay proceedings in one action on the Chief Clerk's certificate, that the other should be prosecuted (*t*).

Titles of both actions; other formal parts: see post No. 1571.
on the part of the above-named infant plaintiff by C. D., his next friend in the first [*Or*, second] mentioned action,

Or, on the part of the defendant,

that all further proceedings in the second [*Or*, first] mentioned action may be stayed; and that G. H., the next friend of the plaintiff therein, may be ordered to pay to the said C. D., and also

(*r*) Where two or more actions for the same purpose are commenced in the name of an infant by different persons acting as his next friends, the Court will, where no judgment has been given in any of the actions, direct an inquiry which action is most for his benefit, and when that point is ascertained will stay the proceedings in the other actions. Where all actions are attached to the same judge, and none of them are in the paper for hearing, the inquiry will be directed on the *ex parte* application of either party; where the actions are pending before different judges, an order must first be obtained transferring them all to the same judge, and the application is then made by motion, of which notice must be given to all parties; Dan. Pr. 68. The application should be intituled in all the actions; *Ibid.* When the result of the inquiry has been certified, the application to stay is made by motion on notice; *Ibid.*

(*s*) See note (*r*) to No. 59 *ante*. For form of order see *Turner* v. *Cooke*, M. R. 19 April, 1866, Reg. Lib. B. 739, where the application was by one of the next friends; but the better course is to make the application in the name of an infant by a next friend.

(*t*) See note (*r*) to No. 59 *ante*.

to the defendant E. F., their costs of and occasioned by the said second [*Or*, first] mentioned action and of the application for the order dated the —— day of ——, 187— [*Order directing inquiry which of the two actions should be prosecuted*], and of the inquiry thereby directed, and of and relating to this application.

62.

Notice of motion to stay proceedings in action brought in name of infant plaintiff, where judgment has been given in another action for same purpose (*u*).

Titles of both actions; other formal parts: see post No. 1571.

on the part of the above-named infant plaintiff by C. D., his next friend in the first above-mentioned action,

Or, on the part of the defendant,

that all further proceedings in the second-mentioned action may be stayed; and that G. H., the next friend of the plaintiff therein, may be ordered to pay to the said defendant his costs of the said second-mentioned action; and may also be ordered to pay to the said C. D. and to the said defendant their costs of this application.

63.

Summons to strike out name of infant co-plaintiff, and make him a defendant (*v*).

Formal parts: see post No. 881.

on the part of the above-named infant plaintiff A. B., by C. D. his next friend for the purpose of this application (*w*), that the name of the above-named infant plaintiff A. B. may be struck out as a party plaintiff in this action, and may be inserted as a party defendant thereto; and that the writ of summons and all subsequent proceedings in this action may be amended accordingly.

64.

Motion paper by sole plaintiff, on coming of age, to dismiss action with costs, before judgment (*x*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff, late an infant but now of full age, that this action may stand dismissed: with costs to be paid by the plaintiff to C. D., late his next friend, and to the defendants.

(*u*) Where judgment has been given in one action brought in the name of an infant plaintiff, another action brought in his name for the same purpose will be stayed without any inquiry; Dan. Pr. 69; and see note (*r*) to No. 59 *ante*.

(*v*) If an infant is made co-plaintiff with others, and it appears to be more for his benefit that he should be made a defendant, an order to that effect may be obtained upon summons on notice; Dan. Pr. 70, and note (*x*).

(*w*) See note (*f*) to No. 49 *ante*.

(*x*) After an infant sole plaintiff comes of age, the next friend ought not to take any further proceedings in the action; Dan. Pr. 77. The late infant has an election whether he will proceed or not; if he elects to proceed, all future

65.
Petition of course for the like (*x*).

Formal parts : see post No. 1576.

The humble petition of the plaintiff, late an infant, but now of full age.

Showeth as follows :

1. Your petitioner, when an infant, by C. D. his next friend, issued a writ of summons in this action against the defendants : to which they appeared ; but no judgment has yet been given in this action.

2. Your petitioner has now attained his age of twenty-one years ; and is desirous not to proceed any further in the said cause.

Your petitioner therefore humbly prays, that this action may stand dismissed : with costs to be paid by him to the said C. D., and to the defendants.

And your petitioner will ever pray, *&c.*

66.
Notice of motion to stay proceedings after judgment, in like case (*x*).

Formal parts : see post No. 1571.

on behalf of the plaintiff, late an infant, but now of full age, that on payment by him to C. D., late his next friend, and to the defendants, of their costs of this action, all further proceedings therein may be stayed.

67.
Notice of motion by a co-plaintiff, on coming of age, to strike out his name as plaintiff (*y*).

Formal parts, see post No. 1571.

on behalf of the plaintiff A. B., late an infant, but now of full age, that his name may be omitted in all future proceedings in this action, as a party co-plaintiff thereto.

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proceedings are carried on in his name, and he becomes liable for costs from the commencement of the action ; if he elects to abandon the action, he may either obtain an order to dismiss the action on payment of costs by himself, or he may refrain from taking any step therein ; in which case he cannot be made to pay costs, and the action may on the defendant's application be dismissed without costs ; Dan. Pr. 76, 77. The application by the infant for an order to dismiss the action on payment of costs by himself is, if judgment has not been given, by motion or petition of course ; if judgment has been given, by motion on notice ; Dan. Pr. 76, and note (*e*).

(*x*) See *ante*, note (*x*) to No. 64.

(*y*) An infant co-plaintiff on coming of age, and desiring to repudiate the action should move on notice to have his name struck out as co-plaintiff, and on the request of the remaining plaintiffs it will be inserted as a defendant ; Dan. Pr. 77. For forms of order see *Bicknell* v. *Bicknell*, M. R. 30 April, 1863, Reg. Lib. A. 1017 ; *Sanger* v. *Sanger*, M. R. 19 June, 1868, Reg. Lib. B. 1574 ; Seton, ed. 3, 1253, No. 8.

68.

Motion paper for leave to serve infant defendant personally (*b*).

(2.) *Defendants* (*a*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff that service of the writ of summons in this action on the infant defendant A. B. personally may be deemed good service thereof on the said defendant A. B.

An affidavit in support accompanies.

69.

Summons for like purpose (*b*).

Formal parts: see post No. 881.

on the part of the plaintiff, that service of the writ of summons in this action [*continue as in last form to:* on the said defendant A. B.].

70.

Affidavit in support.

Formal parts: see post No. 693.

1. The defendant A. B. is an infant under the age of twenty-one years, namely of the age of —— years.

2. The said defendant A. B. has no father or guardian, nor is he residing with or under the care of any person, but he is residing in furnished apartments at —— [*or as may be*].

3. [*Show means of knowledge.*]

(*a*) Infants may defend an action by their guardians appointed for that purpose in the manner formerly practised in the Court of Chancery; R. S. C. Ord. XVI. 8. As to who will be appointed guardian *ad litem*, see Dan. Pr. 146, 147; Morgan, 468, note (*c*); as to the mode of obtaining the appointment of a guardian *ad litem*, see Dan. Pr. 146, 147; and *post* Nos. 72 to 74. As to the powers and duties of a guardian *ad litem*, see Dan. Pr. 148; Morgan, 476, note (*g*); Ord. 5 Feb. 1861, rule 24; *Knatchbull* v. *Fowle* 1 Ch. D. 604; *Fryer* v. *Wiseman*, 24 W. R. 205.

(*b*) When an infant is a defendant to an action, service on his or her father or guardian, or, if none, then upon the person with whom the infant resides, or under whose care he or she is, will, unless the Court or judge otherwise orders, be deemed good service on the infant; but the Court or judge may order that service made or to be made on the infant shall be deemed good service; R. S. C. Ord. IX. 4.

71.
Consent to act as guardian *ad litem* of infant defendant.

187—. B. No. —.

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
Between A. B. and others . . Plaintiffs,
and
C. D. and others . . Defendants.

I, G. H., of [*residence and addition*], consent to be appointed guardian *ad litem* of E. F., a defendant in this action

Or, of E. F., who has been served with notice of the judgment dated the —— day of ——, 187— in this action

Or, of E. F., who has been served with the petition presented by—*Or*, summons taken out on behalf of—A. B. in this action [*Or*, matter]

and I authorise Mr. X. Y., of [*Place of business*] to defend this action

Or, to obtain an order to attend the proceedings under the said judgment

Or, to appear on the hearing of the said petition—*Or*, summons

on behalf of the said E. F., by me as such guardian.

Dated the —— day of ——, 187—.

72.
Motion paper by defendant, for a guardian to be assigned him (*c*).

Formal parts : see post No. 1570.

To move on behalf of the defendant A. B. an infant, by C. D. of [*residence and addition*], his next friend (*d*), that the said C. D. may be assigned his guardian by whom he may defend this action.

An affidavit of fitness accompanies.

(*c*) An order appointing a guardian *ad litem* to an infant defendant may be obtained on the application of the infant defendant on motion or petition of course, such application being supported by an affidavit showing the fitness of the proposed guardian, and that he has no interest in the subject-matter of the action adverse to that of the infant; Dan. Pr. 146. For form of affidavit, see *post* No. 74. Before the application is made, an appearance should be entered in the action for the infant; but no other step should be taken before the appointment of a guardian *ad litem;* Dan. Pr. 146, 147. For form of consent to act as guardian *ad litem*, see *ante* No. 71. For form of order on motion of course, see Seton, ed. 3, 1250, No. 1; for form of order on petition of course, see *Best* v. *Standeven*, M. R. 18 Dec. 1869, Rolls Lib.

(*d*) See note (*f*) to No. 49 *ante*.

73.

Petition of course for the like (*c*).

Formal parts: see post No. 1576.

The humble petition of the defendant A. B. an infant by C. D. of (*residence and addition*), his next friend (*d*).

Showeth as follows:

1. The plaintiff has issued a writ of summons in this action against your petitioner: who has appeared thereto.

2. The said C. D. has no interest in this action adverse to your petitioner; and is a proper person to be assigned his guardian *ad litem*.

Your petitioner therefore humbly prays, that the said C. D. may be assigned his guardian, by whom he may defend this action.

And your petitioner will ever pray, *&c.*

74.

Affidavit in support of motion or petition (*e*).

Formal parts: see post No. 693.

1. The defendant A. B. is under the age of twenty-one years; and he has been served with the writ of summons in this action, and has appeared thereto.

2. I know and am well acquainted with C. D. of (*residence and addition, as in motion paper or petition*), the person proposed to be assigned the guardian of the said A. B. by whom he may defend this action.

3. The said C. D. is [*State degree of relationship to, or connection with the family of, the infant; as thus:*] the maternal uncle of the said A. B., and has no interest in the matters in question in this action adverse to the interest therein of the said A. B.; and in my judgment and belief the said C. D. is a fit and proper person to be assigned such guardian as aforesaid.

4. [*Show means of knowledge.*]

75.

Motion paper for a guardian to be assigned an infant, as respondent to a petition (*f*).

Formal parts: see post No. 1570.

To move on behalf of A. B. an infant by C. D. of (*residence and addition*), his next friend: who has been served with a copy of the petition preferred on the —— of ——, 187—, by D. A. and others in this action [*Or*, in this matter; *or as may be*] to the High Court of Justice: that the said C. D. may be assigned his guardian, by whom he may appear upon the said petition.

The copy of the petition, and an affidavit in support of the motion, accompany.

(*c*) See note (*c*) to No. 72 *ante*.

(*d*) See note (*f*) to No. 49 *ante*.

(*e*) The affidavit that the proposed guardian has no interest adverse to the plaintiff must be made by the solicitor; if the solicitor is unable to depose to the other facts another deponent must be joined, and the affidavit altered accordingly.

(*f*) See note (*c*) to No. 72 *ante*; and Dan. Pr. 146, note (*s*); Dan. Pr. 1456. For form of order, see *Re Herne Bay, &c., Act*, M. R. 26 April, 1865, Reg. Lib. A. 812.

76. Petition of course for the like (*f*).

Formal parts: see post No. 1576.

The humble petition of A. B. an infant by C. D. of (*residence and addition*), his next friend.

Showeth as follows:

1. Your petitioner has been served with a copy of the petition preferred on the —— of ——, 187—, by D. A. and others in this action [*Or*, in this matter; *or as may be*] to the High Court of Justice.

2. The said C. D. has no interest in the matters in the said petition referred to adverse to that of your petitioner; and is a proper person to be assigned his guardian on the said petition.

Your petitioner therefore humbly prays, that the said C. D. may be assigned the guardian of your petitioner, by whom he may appear upon the said petition.

And your petitioner will ever pray, *&c.*

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77. Affidavit in support of motion or petition (*g*).

Formal parts: see post No. 693.

1. A. B. has been served with a copy of the petition preferred on the —— of ——, 187—, by D. A. and others in this action [*Or*, in this matter; *or as may be*] to the High Court of Justice.

2. The said A. B. is under the age of twenty-one years.

3. I know and am well acquainted with C. D. of (*residence and addition*), the person proposed to be assigned the guardian of the said A. B., by whom he may appear upon the said petition.

4. The said C. D. is [*State degree of relationship to, or connection with the family of, the infant, as thus:*] the maternal uncle of the said A. B.; and has no interest in the matters in the said petition referred to adverse to the interest of the said A. B.; and in my judgment and belief the said C. D. is a fit and proper person to be assigned such guardian as aforesaid.

5. [*Show means of knowledge.*]

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78. Notice of motion by plaintiff, that a guardian may be assigned an infant defendant (*h*).

Formal parts: see post No. 1571.

on the part of the plaintiff, that Mr. Henry Leigh Pemberton, one of the solicitors of the Supreme Court, or some other proper

(*g*) See note (*e*) to No. 74 *ante*.

(*h*) Where no appearance has been entered to a writ of summons for a defendant who is an infant, the plaintiff may apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order may be made unless it appears on the hearing of the application that the writ of summons was duly served, and that notice of the application was after the expiration of the time allowed for appearance, and at least six clear days before the day in

person (*i*), may be assigned the guardian of the defendant A. B. an infant by whom he may appear and defend this action [*If an appearance has been entered for the infant defendant, say:* by whom he may defend this action].

79.
Affidavit in support, where the infant defendant has not appeared (*k*).

Formal parts: see post No. 693.

1. [*Prove service of the writ of summons* (*l*), *and that no appearance has been entered for the infant defendant* (*m*).]

2. The said defendant A. B. is an infant under the age of twenty-one years.

3. On the —— day of ——, 187— (*n*), I served C. D. of

such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service; R. S. C. Ord. XIII. 1. An application under this rule is made by motion, of which notice must be served in the manner mentioned in the rule; see Dan. Pr. 147. For cases in which service on the father or guardian has been dispensed with, see Dan. Pr. 147; *Ibid.* 400; Morgan, 468. The application must be supported by an affidavit proving service of the writ of summons, that the infant defendant has not appeared, and that notice of the application was served in the manner required by rule 1, *supra*; for form of affidavit see *post* No. 79. Where the infant defendant has appeared, but default is made by his solicitor in obtaining the appointment of a guardian *ad litem*, the plaintiff may apply by motion for the appointment of a guardian; in this case the notice of motion is served in the ordinary way on the solicitor by whom the defendant has appeared; Dan. Pr. 147; *Ibid.* 400; Morgan, 477, note (*b*); and the application must be supported by an affidavit of appearance, and of no guardian having been appointed; see *post* No. 80. For form of order appointing a guardian *ad litem* to an infant defendant at the instance of the plaintiff, see *Speight* v. *Walton*, V.-C. S. at Chambers, 24 April, 1870, Reg. Lib. B. 1054; *Durrant* v. *Durrant*, V.-C. W. 29 Jan. 1864, Reg. Lib. A. 176.

(*i*) The solicitor to the Suitors' Fee Fund is the person usually appointed; Dan. Pr. 147; but in *Durrant* v. *Durrant*, V.-C. W. 29 Jan. 1864, Reg. Lib. A. 176, another person was appointed. As to the costs of the solicitor to the Fee Fund, where he is appointed, see Cons. Ord. XI. 4; Dan. Pr. 147, note (*b*).

(*k*) The affidavit should be in this form where no appearance has been entered for the infant defendant, and the application is under R. S. C. Ord. XIII. 1; see note (*h*) to No. 78 *ante*.

(*l*) For form of affidavit of service of writ, see *post* No. 346.

(*m*) For form of affidavit of no appearance having been entered, see *post* No. 287.

(*n*) As to the time for service of the notice of motion, see R. S. C. Ord. XIII. 1, and note (*h*) to No. 78 *ante*.

[*residence and addition*], who is the person with whom or under whose care the said defendant A. B. was, at the time of serving the writ of summons in this action in manner aforesaid,

[*If* C. D. *is the father or guardian of the infant, add :*] and who is also the father [*Or*, guardian] of the said A. B.,

[*If* C. D. *is not the father or guardian, add :*] and on the —— day of ——, 187— (*n*), I also served E. F., of [*residence and addition*], who is the father [*Or*, guardian] of the said A. B. (*o*),

with a notice in writing intituled in this action and purporting that [*here recite the notice*] by [*here describe the mode of service* (*p*), *as :*]

delivering a true copy of the said notice to, and leaving the same with, the said C. D. personally at [*State where*]; *Or*, leaving a true copy of the said notice at [*State where*] the dwelling-house of the said C. D., with a servant [*or as may be*] of the said C. D.;

[*If* C. D. *is not the father or guardian, and the father or guardian has been served, add :*] and by delivering another true copy of the said notice to, and leaving the same with, the said E. F. personally at [*State where*]; *Or*,

and by leaving another true copy of the said notice at [*State where*], the dwelling-house of the said E. F., with a servant [*or as may be*] of the said E. F.

4. [*Show means of knowledge.*]

80.

Affidavit in support where the infant defendant has appeared (*q*).

Formal parts : see post No. 693.

1. The above-named defendant A. B. is an infant under the age of twenty-one years.

2. On the —— day of ——, 187—, an appearance for the said defendant A. B. was duly entered in this action by Mr. P. Q., of [*place of business*], as solicitor for the said A. B.

3. On the —— day of ——, 187—, the plaintiff's statement of claim in this action was delivered to the said Mr. P. Q., as the solicitor for the said defendant A. B. No statement of defence thereto has yet been delivered on behalf of the said defendant A. B., although the time for so doing has expired, and no guardian *ad litem* has been assigned the said A. B. by whom he may defend this action.

(*n*) As to the time for service of the notice of motion, see R. S. C. Ord. XIII. 1; and note (*h*) to No. 78 *ante*.

(*o*) The Court or judge may, on the hearing of the application, dispense with the additional service on the father or guardian; R. S. C. Ord. XIII. 1; note (*h*) to No. 78 *ante*. For cases in which such service has been dispensed with, see Dan. Pr. 147; *Ibid.* 400; Morgan, 468. The reasons for not serving the father or guardian should be stated in the affidavit.

(*p*) As to the mode in which notice of the application may be served, see R. S. C. Ord. XIII. 1, and note (*h*) to No. 78 *ante*.

(*q*) The affidavit should be in this form when an appearance has been entered for the infant defendant; see note (*h*) to No. 78 *ante*.

4. [*Prove service of the notice of motion on the solicitor: see post* No. 1573 (*r*).]

5. [*Show means of knowledge.*]

81.

Summons for directions as to mode of serving notice of a judgment, or order, on an infant (*s*).

Formal parts: see post No. 881.

on the part of the plaintiff, that notice of the judgment [*Or*, order], dated the —— day of ——, 187—, which, pursuant to the stat. 15 & 16 Vict. c. 86, s. 42, r. 8 [*Or*, 31 & 32 Vict. c. 40, s. 9], is required to be served upon A. B., C. D., and E. F., infants, may be served upon them respectively as follows: [*State proposed mode of service; as thus:*]

(1) As to the said A. B., by serving him personally at [*State where*]; (2) As to the said C. D., by serving the same on his father, G. D.; And (3) as to the said E. F., by serving the same on his testamentary guardian H. L.

And that a copy of the order to be made hereon may be served with each of the said notices.

82.

Affidavit in support (*t*).

Formal parts: see post No. 693.

1. A. B., C. D., and E. F., on whom, respectively, notice of the judgment [*Or*, order] in this action, dated the ——, 187—, is required to be served, as being respectively interested in the matters in question in this action as [*State, shortly, how; as thus:*] three

(*r*) Where the defendant has appeared, it is sufficient to serve the notice of motion on the solicitor; Dan. Pr. 147, 400; Morgan, 477.

(*s*) As to serving notice of a judgment on a person who would otherwise be a necessary party to the action, see 15 & 16 Vict. c. 86, s. 42, rule 8; 31 & 32 Vict. c. 40, s. 9; *ante*, p. 3; Dan. Pr. 358, *et seq.* Where any person whom it is necessary to serve is an infant, an *ex parte* application must be made to the judge by summons for directions as to the manner of service; Cons. Ord. VII. 5; Regulations, 8 August, 1857, rule 7; Dan. Pr. 359, 360; the application must be supported by an affidavit; *Ibid.*; for form of affidavit, see *post* No. 82. A copy of the order must be served with the notice; Dan. Pr. 360. For forms of order, see *Row* v. *Row*, V.-C. W. at Chambers, 20 December, 1865, Reg. Lib. B. 2470; *O'Toole* v. *Brown*, M. R. at Chambers, 21 December, 1867, Reg. Lib. B. 3011; *Wells* v. *Pratt*, M. R. at Chambers, 23 June, 1868, Reg. Lib. B. 1801.

(*t*) The application must be supported by an affidavit which must show, as far as the applicant is able:—The ages of the infants; whether they have any parents or testamentary guardians, or guardians appointed by the Court of Chancery; where, and under whose care, the infants are residing; at whose expense they are maintained; and, in case they have no father or guardian, who are their nearest relations; and that the parents, guardians, relations, or persons on whom it is proposed to serve the notice, have no interest in the matters in question, or, if they have, the nature of such interest, and that it is not adverse to the interests of the infants; Regulations, 8 August, 1857, rule 7. The form of affidavit in the text can be readily adapted to meet the circumstances of the particular case.

of the residuary legatees of G. H., the testator therein named, are respectively infants; that is to say: the said A. B. is of the age of —— years; the said C. D. is of the age of —— years; and the said E. F. is of the age of —— years.

2. The said A. B. has no parent, testamentary guardian, or guardian appointed by this honourable Court. He is now residing at No. 400, Chancery Lane, London, under the care of Mr. W. N., law stationer, to whom he is apprenticed; and he is maintained at the expense of the said W. N. The nearest relations of the said A. B. are: (1) his paternal uncle S. B., of, *&c.*; and (2) his maternal aunt N. M., the wife of W. M., of, *&c.*

3. The said C. D. is residing with, and is under the care of his father G. D., esquire, at Esher in Surrey; and is maintained at the expense of the said G. D.

4. The said E. F. has no father. H. L., of Hampstead Heath, gentleman, is his testamentary guardian. The said E. F. is now residing at Brighton College, as a boarder; and is maintained there out of the income of his property. His nearest relations are: (1) his mother S. F., of, *&c.*, widow; and (2) his maternal uncle, the said H. L.

5. The said G. D., on whom it is proposed to serve notice of the said judgment [*Or*, order] on behalf of the said C. D., has no interest in the matters in question in this suit.

6. The said H. L., on whom it is proposed to serve notice of the said judgment [*Or*, order] on behalf of the said E. F., has an interest in the matters in question in this action, as [*State the nature of the interest; as thus:*] another of the residuary legatees of the said G. H.; but such interest is not adverse to the interest of the said E. F.

7. [*Show means of knowledge.*]

83.

Memorandum to be indorsed on the notice, when served on an infant (*u*).

Formal parts: see ante No. 22.

To [*Name of person on whom notice is to be served*].

Take notice, that, from the time of the service of this notice, you [*Or, if served on a substitute, say:*] the infant A. B., in the order in this action, dated the ——, 187— [*Order to substitute service*], named

will be bound by the proceedings in the above action, in the same manner as if you [*Or*, the said infant] had been originally made a party to the action; and that you [*Or*, the said infant] may, by an order of course, have liberty to attend the proceedings under the within-mentioned judgment [*Or*, order]; and that you [*Or*, the said infant] may, within one month after the service of this notice, apply to the Court to add to the judgment [*Or*, order].

(*u*) See Cons. Ord. XXIII. 20. For form of notice whereon this memorandum should be indorsed, see *ante* No. 21; or it may be indorsed on a copy of the judgment or order; Dan. Pr. 362. For form of affidavit of service, see *ante* Nos. 28 and 29.

84.

Motion paper for leave for infant, who has been served with notice of a judgment, to attend the proceedings by his guardian (*v*).

Formal parts: see post No. 1570.

To move on behalf of A. B. an infant, by C. D. of [*residence and addition*], his next friend, who has been served pursuant to the statute 15 & 16 Vict. c. 86, s. 42, r. 8 [*Or*, 31 & 32 Vict. c. 40, s. 9], with notice of the judgment [*Or*, order], dated ——, 187—, that the said C. D. may be assigned his guardian, by whom he may attend the proceedings under the said judgment [*Or*, order]; and that he may be at liberty to attend the said proceedings by such guardian accordingly.

An affidavit in support accompanies.

85.

Petition of course for the like (*v*).

Formal parts: see post No. 1576.

The humble petition of A. B. an infant, by C. D. of [*residence and addition*], his next friend.

Showeth as follows:

1. Your petitioner has been served with notice of the judgment [*Or*, order] made in this action and dated the ——, 187—.

2. Your petitioner claims to be interested in the subject-matter of this action, and desires to attend, by his guardian, the proceedings under the said judgment [*Or*, order].

Your petitioner therefore humbly prays, that the said C. D. may be assigned [*Continue as in* No. 84 *ante to* accordingly].

And your petitioner will ever pray, *&c.*

86.

Affidavit in support (*w*)

Formal parts: see post No. 693.

1. Pursuant to an order made in this action dated the ——, 187— [*Order directing mode of service*], the said A. B., therein named, has been served with notice of the judgment [*Or*, order] made in this action, dated the —— of ——, 187—.

(*v*) An infant who is served with notice of a judgment and desires to attend the proceedings thereunder, must obtain leave to do so, and when he has obtained leave, he must attend by his guardian *ad litem*; 15 & 16 Vict. c. 86, s. 42, rule 8; 30 & 31 Vict. c. 40, s. 9; Cons. Ord. VII. 6; Dan. Pr. 363. In practice the applications for leave to attend the proceedings, and for the appointment of a guardian are combined in one; Dan. Pr. 363, note (*u*). The application is by motion or petition of course, supported by an affidavit; 15 & 16 Vict. c. 86, s. 42, rule 8; Cons. Ord. VII. 6; Dan. Pr. 363. For form of affidavit, see *post* No. 86. For form of consent to act as guardian *ad litem*, see *ante* No. 71. For form of order, see *West* v. *West*, M. R. 7 Mar. 1876, Rolls Lib.

(*w*) See note (*e*) to No. 74 *ante*.

2. The said A. B. is an infant.

3. I know and am well acquainted with C. D., of [*residence and addition*], the person proposed to be assigned the guardian of the said A. B., by whom he may attend the proceedings under the said judgment [*Or*, order].

4. 5. The said C. D. is [*Continue as in* No. 74, *ante paragraphs* 3, 4].

87.

Consent of new guardian *ad litem* to act.

Formal parts: see ante No. 71.

I, A. B. of [*residence and addition*], consent to be appointed, and to act in the place of L. M., as guardian *ad litem* of C. D., a defendant in this action.

Or, of C. D., who has obtained an order for leave to attend the proceedings under the judgment in this action.

Or, of C. D., who has been served with the petition presented by —*Or*, summons taken out by—E. F., in this action [*Or*, matter; *or as may be*].

And I authorise Mr. G. H., of [*place of business*], to defend this action

Or, to attend the said proceedings

Or, to appear upon the said petition [*Or*, summons; *or as may be*]

on behalf of the said C. D., by me as such guardian.

Dated —— day of ——, 187—.

88.

Motion paper by defendant, for a guardian to be assigned him, in lieu of one deceased (*x*).

Formal parts: see post No. 1570.

To move on behalf of the defendant A. B. an infant, by C. D. of [*residence and addition*], his next friend, that the said C. D. may be assigned his guardian, by whom he may defend this action, in lieu of G. H. now deceased.

An affidavit in support accompanies.

89.

Petition of course for the like (*x*).

Formal parts: see post No. 1576.

The humble petition of the defendant A. B. an infant, by C. D. of [*residence and addition*], his next friend.

Showeth as follows:

1. The plaintiff issued a writ of summons in this action against

(*x*) If a guardian *ad litem* dies pending the action or proceeding, a new guardian must be appointed; this is done in the same manner as the original guardian was appointed and upon similar evidence; Dan. Pr. 148; see note (*c*) to No. 72 *ante*. For form of consent by new guardian to act, see No. 87 *ante*. If the solicitor for the infant defendant neglects to obtain the appointment of a new guardian, the plaintiff may apply for that purpose; see No. 78 *ante*.

your petitioner: who appeared thereto; and by an order, dated the —— of ——, 187—, G. H. was assigned his guardian *ad litem*.

2. The said G. H. died on the —— of ——, 187—.

3. The said C. D. has no interest in the subject matter of this suit adverse to your petitioner, and is a proper person to be assigned his guardian *ad litem*.

Your petitioner therefore humbly prays, that the said C. D. may be assigned his guardian, by whom he may defend this action, in lieu of the said G. H.

And your petitioner will ever pray, &c.

90.

Affidavit in support of motion or petition (*y*).

Formal parts: see post No. 693.

1. G. H., who, by order dated the —— of ——, 187—, was assigned the guardian *ad litem* of the defendant A. B. in this action, died on the —— of ——, 187—; and no person has since been assigned such guardian.

2. The said A. B. is still under the age of twenty-one years.

3. I know and am well acquainted [*&c.; Continue as in paragraphs* 2, 3, 4, *of form*, No. 74 *ante*.]

91.

Notice of motion or summons for removal of a guardian and appointment of another (*z*).

Formal parts: see post No. 1571 *or* 881.

on the part of the defendant A. B., by C. D. of [*residence and addition*], his next friend for the purpose of this application, that E. F., the guardian *ad litem* of the said A. B., assigned by order, dated the —— day of ——, 187—, may be removed. And that the said C. D., or some other proper person, may be assigned such guardian, in lieu of the said E. F.

(*y*) See note (*e*) to No. 74 *ante*.

(*z*) The Court will remove a guardian *ad litem* on sufficient ground being shown; Dan. Pr. 148. The application should be made by the infant, by his next friend for the purpose of the application, by motion or summons on notice; *Ibid.* It should be supported by an affidavit of the circumstances and of the fitness of the proposed new guardian. For form of affidavit of fitness, see *ante* No. 74. For form of consent by the proposed new guardian to act, see *ante* No. 87.

92.

Præcipe for *subpœna* for infant defendant, on coming of age, to show cause against judgment (*a*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.

B. } Seal a *subpœna* directed to C. D., to show cause against
v. } the judgment of this Court, dated the —— day of
D. } ——, 187—.

Returnable —— day of ——, 187—.

Tested —— day of ——. 187—.

X. Y., of [*place of business*], agent for
T. Z., of [*place of business*], plaintiff's solicitor.
Or, A. B., of [*address*], plaintiff in person.

(*a*) Formerly in all cases in which the Court directed the real estates of an infant to be sold or conveyed, the execution of the decree was necessarily deferred until the infant acquired capacity for making the conveyance by attaining the age of 21 years; and in such cases the practice was to insert in the decree a clause giving the infant a day to show cause against it within a certain time after he came of age. By 11 Geo. 4 & 1 Wm. 4, c. 47, ss. 10, 11; and the Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 30, the Court of Chancery formerly was, and the High Court of Justice now is (see the Supreme Court of Judicature Act, 1873, (36 & 37 Vict. c. 66,) s. 76), enabled to deal with the real estates of infants; and the only case in which it appears to be now necessary to insert in a judgment against an infant defendant a clause allowing him six months after he comes of age to show cause against it, is the case of a legal foreclosure action; Dan. Pr. 149—152. As to what may be shown for cause, see Dan. Pr. 152. Where an infant defendant has a day given him by the judgment to show cause against it, upon his coming of age a writ of *subpœna* must be prepared by the plaintiff's solicitor, and sealed by the Record and Writ Clerk or District Registrar, and served upon the late infant defendant. Service of the writ is effected by delivering a copy of the writ and of the indorsement thereon to the defendant or to some member of his family at his dwelling house or usual place of abode; Cons. Ord. X. 1; *Ib.* XXVIII. 6. If service cannot be thus effected, an application may be made to the Court to substitute service; see *post* No. 97. The service must be effected within twelve weeks after the issuing of the subpœna; Cons. Ord. XXVIII. 9. The *præcipe* for the writ must contain the name or firm and place of business of the solicitor or solicitors suing out the same, and where such solicitor or solicitors is or are agent or agents only, then also the name or firm and place of business of the principal solicitor or solicitors; Cons. Ord. XXVIII. 1. On suing out the writ of *subpœna* a fee is payable of 5*s.* on the lower scale, and 10*s.* on the higher scale, by means of a stamp impressed upon the præcipe; Ord. as to Court fees, Oct. 1875, Sched.; Ord. as to fees, April, 1876, Sched.; Wilson, 506, 522.

93.

Writ of *subpœna* (*b*).

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To [*Insert name of defendant*], greeting:

We command you that within —— days (*c*) after the service of this writ on you, exclusive of the day of such service, you do show unto the Chancery Division of our High Court of Justice good cause why a certain judgment of our said High Court of Justice, made on the —— day of ——, 187—, in a certain action, wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants,

should not be binding upon you. In default whereof such judgment will stand, and be absolute against you.

Witness, the Right Honourable ————, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, 187— (*d*).

94.

Indorsement on writ when issued by a solicitor (*e*).

This writ was issued by John Jones [*Or*, Jones and Styles], of No. 600, Edgware Road, in the county of Middlesex, whose address for service is at the office of Mr. Charles Robinson, No. 437, Cheapside, in the City of London, agent [*Or*, agents] for Thomas Smith [*Or*, Smith and Brown], of Lynn, in the county of Norfolk, solicitor [*Or*, solicitors] for the plaintiff within named.

95.

The like, when issued by the plaintiff in person (*f*).

This writ was issued by John Brown, the plaintiff in person, of Blank Cottage, Lewisham, in the county of Kent, whose address for service is at the office of Mr. Daniel Hughes, No. 400, Chancery Lane, in the county of Middlesex.

(*b*) See Cons. Ord. Appendix, Sched. (E), No. 6. As to the time for, and manner of, service of the writ, see note (*a*) to No. 92 *ante*. As to the fee payable on the writ, see *ibid.*

(*c*) Eight is the usual number inserted.

(*d*) Every writ must bear date on the day on which it is issued, and must be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor be vacant, in the name of the Lord-Chief Justice of England; R. S. C. Ord. II. 8.

(*e*) See Cons. Ord. III. 2.

(*f*) See Cons. Ord. III. 5.

96.
Motion paper for leave to serve subpœna out of jurisdiction. (*ff*)

Formal parts : see post No. 1570.

To move on behalf of the plaintiff that he may be at liberty to serve a *subpœna* directed to the defendant C. D., to show cause why the judgment, dated the —— day of ——, 187—, should not be binding upon him, upon the said C. D., at ——, or elsewhere, in the [Kingdom] of ——.

The judgment and affidavit in support accompany.

97.
Motion paper for substituted service of the subpœna (*g*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff, that service of a *subpœna*, directed to the defendant C. D., to show cause why the judgment, dated the ——, 187—, should not be binding upon him, upon [*State mode of service proposed ; as thus :*]

A. B. and D. E., members of the firm of B. & E., of No. 18, New Square, Lincoln's Inn, or one of them,

may be deemed good service on the defendant C. D.

The judgment and affidavit in support, accompany.

98.
Motion paper to make decree absolute (*h*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff, that the judgment, dated the ——, 187—, may be made absolute against the defendant C. D.

The judgment, affidavit in support, and certificate of no cause shown, accompany.

99.
Affidavit in support (*j*).

Formal parts : see post No. 693.

1. [*Show that defendant is of age ; as thus :*] C. D., the defendant [*Or*, one of the defendants] in this action, is the same person as C., the son of E. D., and F. his wife, named in the paper writing marked A., now produced and shown to me (*k*), and purporting to be a certified copy of an entry in the register book of baptisms kept for the parish of A., in the county of B., in the year 184— : as I know from [*Show means of knowledge*].

(*ff*) For form of affidavit in support, see *post* No. 873.

(*g*) See note (*a*) to No. 92 *ante*. For form of affidavit in support, see *post* No. 1265. A copy of the order must be served with the *subpœna ;* Dan. Pr. 155.

(*h*) If the party served does not appear to the *subpœna* within the time limited, the judgment will be made absolute upon an *ex parte* motion supported by evidence of the infant having attained full age, of service of the *subpœna*, and by the Registrar's certificate of no cause shown ; Dan. Pr. 155.

(*j*) See note (*h*) to last form.

(*k*) Exhibit the certificate. For form of memorandum of exhibit, see *post* No. 723

2. [*Prove service (l) of the subpœna to show cause: as follows:*] On the —— day of ——, 187—, I served the defendant C. D. with a *subpœna*, dated the —— day of ——, 187—, issuing out of, and under the seal of, this honourable Court, by delivering a true copy of the said *subpœna*, and of an endorsement thereon, in the form prescribed by the 3rd of the Consolidated General Orders of the Court of Chancery, rule 2 [*Or*, rule 5], to, and leaving the same with,

[*If service personal, say:*] the said defendant C. D., at [*State where*], in the county of ——.

[*If service not personal, say:*] the wife [*Or*, son; *Or*, servant] of the said defendant C. D., at the dwelling-house or usual place of abode of the said defendant C. D., situate at [*State where*], in the county of ——.

[*In case of substituted service, say:*] G. H., the person named in the order hereinafter mentioned, at [*State where*], in the county of ——.

And I, at the time of such service, produced and showed unto the said defendant C. D.,

Or, unto the said wife [*Or*, son; *Or*, servant] of the said defendant C. D.,

Or, unto the said G. H.,

the said original *subpœna*, so under seal, as aforesaid.

3. [*In cases of substituted service, say:*] The said G. H. is the person of that name mentioned in the order made in this action, dated the —— day of——, 187—, whereby it was ordered that [*Set out directions as to substituted service*]; and at the time of the aforesaid service of the said *subpœna*, I also served the said G. H. with the said order, by delivering to, and leaving with him, a true copy of the said order, and I at the same time produced and showed to him such original order, duly passed and entered (*m*).

4. By the said *subpœna*, the said C. D. was commanded, that [*recite the subpœna down to:* and be absolute; *and add:*] against the said C. D.

(*l*) As to the mode of service, see note (*a*) to No. 92 *ante*.

(*m*) See note (*g*) to No. 97 *ante*.

Section II.—Lunatics.

(1) *Plaintiffs* (*a*).

100. Authority by next friend of a lunatic, to use his name as such (*b*).

[*The same as* No. 46, *and* No. 47 *ante, substituting the word* "lunatic" *for* "infant."]

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101. Authority by new next friend of a lunatic, to use his name, and to continue proceedings (*bb*).

[*The same as* No. 48 *ante.*]

(*a*) A person who has been found a lunatic by inquisition must sue by the committee of his estate, if any; if he has no committee, or if the committee has an adverse interest in the matters in question in the action, then the lunatic must sue by his next friend; R. S. C. Ord. XVIII.; Dan. Pr. 80, 81; and in every case the committee, if any, of the lunatic's estate must be a party to the action, either as co-plaintiff or as a defendant; Dan. Pr. 81. If an action is commenced in the name of a lunatic, without either a committee or next friend, the defendant may move to dismiss the action, or he may take advantage of the defect by demurrer, if it appear upon the face of the statement of claim that the plaintiff is a lunatic so found, or by statement of defence if it do not so appear; Dan. Pr. 81, 83. If a plaintiff is found a lunatic, and a committee is appointed after the commencement of the action, an order should be obtained for the committee to carry on the proceedings; see R. S. C. Ord. L. and *ante*, Nos. 5 and 7; and if during the action the committee dies or is removed, and a new committee is appointed, a similar order should be obtained; see R. S. C. Ord. L. and *ante*, Nos. 5 and 7. If the plaintiff's solicitor neglects to obtain an order in either of such cases, to carry on the proceedings, the defendant may, before judgment, move to dismiss the action, unless the order is obtained within a limited time; after judgment the defendant may obtain the order himself; see *ante*, No. 18, and note (*m*). Where a lunatic plaintiff, by reason of his having no committee, or of his committee being adversely interested, sues by a next friend, the practice as to the removal of such next friend, and the appointment of a new next friend, is the same as in the case of infants; Dan. Pr. 82, note (*t*).

(*b*) See note (*c*) to No. 46 *ante*. The consent must be filed when the writ of summons is issued; 15 & 16 Vict. c. 86, s. 11.

(*bb*) See note (*d*) to No. 48 *ante*.

102.

Notice of motion or summons for removal of a next friend and approval of another (*c*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff X. Y., a person of unsound mind so found by inquisition, by C. H., of [*residence and addition*], his next friend for the purpose of this application (*d*), that [*Continue as in* No. 49 *ante, to end*].

103.

Affidavit of fitness of new next friend (*e*).

Formal parts: see post No. 693.

1. The plaintiff A. B., has, by proceedings in lunacy, been found to be a person of unsound mind.

2. The defendant E. F. has been appointed, and is now, the committee of the estate of the said plaintiff, but he has an interest in the matter in question in this action adverse to the interest therein of the said plaintiff, in respect whereof he has been made a defendant to this action.

3. I know and am well acquainted with C. B., of [*Continue as in* No. 50 *ante, to end*].

104.

Summons to substitute a next friend for one desirous to retire (*f*).

Formal parts: see post No. 881.

on the part of the plaintiff X. Y., a person of unsound mind so found, by A. B. his next friend, that [*Continue as in* No. 51 *ante, to end*].

(*c*) The practice as to the removal of a next friend and appointment of a new next friend, is the same in the case of a lunatic as in the case of an infant, as to which see note (*c*) to No. 49 *ante*. The application must be supported by an affidavit of the circumstances, and of the fitness to act of the proposed new next friend, and the consent of the latter to act must be shown; for form of consent, see *ante* No. 48; for form of affidavit in support, see *post* No. 103.

(*d*) Every application on the part of a lunatic must be either by his committee or by a next friend.

(*e*) The plaintiff's solicitor must swear that the committee of the plaintiff's estate (if any) has an adverse interest, and that the proposed new next friend has no adverse interest; where he is unable to depose to the other facts another deponent must be joined, and the affidavit varied accordingly.

(*f*) See note (*g*) to No. 51 *ante*. For consent of the proposed new next friend to act, see No. 48 *ante*; for affidavit of his fitness, see No. 103 *ante*.

105. Motion paper to appoint new next friend in lieu of one deceased (*g*).

Formal parts : see post No. 1570.

To move on behalf the plaintiff X. Y., a person of unsound mind so found, by A. B. [*Continue as in* No. 52 *ante, to end*].

---

106. Petition of course for the like (*g*).

Formal parts : see post, No. 1576.

The humble petition of the plaintiff X. Y., a person of unsound mind so found by A. B., of [*residence and addition*], his next friend for the purpose of this application.

Showeth as follows :

1. Your petitioner has, by proceedings in lunacy, been found to be a person of unsound mind, and the defendant E. F. has been appointed, and now is, the committee of your petitioner's estate.

2. The said E. F. has an interest in the matters in question in this action, adverse to the interest therein of your petitioner.

3. Your petitioner, by C. D., his next friend, issued a writ of summons in this action [*Continue as in* No. 53 *ante, to end*].

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107. Notice of motion or summons to appoint a new next friend in lieu of one incapacitated or removed (*h*).

Formal parts : see post No. 1571 *or* 881.

on the part of the plaintiff X. Y., a person of unsound mind so found, by A. B. [*Continue as in* No. 54 *ante, to end*].

---

108. Notice of motion to dismiss action where lunatic sues neither by his committee or by a next friend (*j*).

Formal parts : see post No. 1571.

on the part of the defendants, that this action may be dismissed with costs to be paid by Mr. C. D., the plaintiff's solicitor, to the defendants, on the ground that the plaintiff, who is a person of unsound mind so found, sues neither by the committee of his estate, nor by a next friend.

(*g*) See note (*h*) to Nos. 52 and 53 *ante.* For form of consent of proposed new next friend to act, see No. 48 *ante*; for form of affidavit of his fitness, see *ante* No. 103.

(*h*) See note (*k*) to No. 54 *ante.* For form of consent by new next friend to act, see No. 48, *ante* ; for form of affidavit of his fitness, see No. 103 *ante.*

(*j*) It seems that the objection may either be taken in this way ; or, if the fact of the plaintiff's lunacy appears upon the face of the statement of claim, by demurrer; or, if it do not so appear, by the statement of defence ; Dan. Pr. 81, 83.

109.
Notice of motion by defendants, to remove next friend and appoint a new one (*k*).

[*The same as* No. 56 *ante.*]

110.
Notice of motion by defendant, that a new next friend may be approved for plaintiff (*l*).

[*The same as* No. 57 *ante.*]

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(2) *Defendants* (*a*).

111.
Motion paper for order as to service on defendant, who is a lunatic (*b*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff, that service of the writ of summons in this action on [*name, residence and addition of person whom it is proposed to serve*] may be deemed good service thereof on the defendant A. B.

An affidavit in support accompanies.

112.
Summons for like purpose (*b*).

Formal parts : see post No. 881.

on the part of the plaintiff, that service [*Continue as in last form to :* on the said defendant A. B.].

(*k*) See note (*n*) to No. 56 *ante.*

(*l*) See note (*o*) to No. 57 *ante.*

(*a*) A person of unsound mind who is a defendant to an action, must defend by the committee of his estate, who, also, is a necessary party to the action ; but if he has no committee, or the committee is plaintiff or has an adverse interest, then he must defend by a guardian *ad litem :* R. S. C. Ord. XVIII. ; Dan. Pr. 158, 159. If pending this action the committee of the estate dies or is removed, and a new committee is appointed, an order to carry on the proceedings against such new committee should be obtained ; R. S. C. Ord. L. ; and *ante* Nos. 6 and 7.

(*b*) When a lunatic is a defendant to an action, service on his committee will, unless the Court or judge otherwise orders, be deemed good service on the defendant ; R. S. C. Ord. IX. 5.

113. Affidavit in support.

Formal parts: see post No. 693.

1. The above named defendant A. B. has by proceedings in lunacy been found to be a person of unsound mind.

2. [*State special circumstances for not serving the committee of the estate of the lunatic; also the reasons for adopting the mode of service mentioned in the motion paper or the summons.*]

3. [*Show means of knowledge.*]

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114. Consent to act as guardian *ad litem* of defendant of unsound mind so found.

[*The same as* No. 71 *ante.*]

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115. Motion paper by a defendant found to be of unsound mind, for a guardian to be assigned him, where his committee is adversely interested (*c*).

Formal parts: see post No. 1570.

To move on behalf of the defendant A. B., a person of unsound mind so found, by C. D., of (*residence and addition*), his next friend, that the said C. D. may be assigned his guardian by whom he may defend this action: his committee, the defendant E. F., having an adverse interest.

An affidavit in support accompanies.

---

116. Petition of course for the like (*c*).

Formal parts: see post No. 1576.

The humble petition of the defendant A. B., a person of unsound mind so found, by C. D. of (*residence and addition*), his next friend.

Showeth as follows:

1. The plaintiff has issued a writ of summons in this action against your petitioner: who has appeared thereto.

2. Your petitioner has, by proceedings in lunacy, been found to be a person of unsound mind; and the defendant E. F., has been appointed and is now the committee of your petitioner's estate.

(*c*) An order appointing a guardian *ad litem* to a defendant who has been found to be of unsound mind, is obtained in the same manner as an order appointing a guardian *ad litem* to an infant defendant, as to which, see note (*c*) to No. 72 *ante*. For form of consent to act as guardian see *ante* No. 71; for form of affidavit in support of the application, see *post* No. 117. Before making the application, an appearance should be entered for the defendant. For form of order on motion of course, see Seton, ed. 3, 1251, No. 3.

3. The said E. F. has an interest in the matters in question in this action adverse to the interest of your petitioner therein.

4. The said C. D. has no interest in this action adverse to your petitioner; and is a proper person to be assigned his guardian *ad litem*.

Your petitioner therefore humbly prays, that the said C. D. may be assigned his guardian, by whom he may defend this action.

And your petitioner will ever pray, &c.

117.

Affidavit in support of motion or petition (*d*).

Formal parts: see post No. 693.

1. The defendant A. B. has been served with the writ of summons in this action, and has appeared thereto.

2. The said A. B. has, by proceedings in lunacy, been found to be a person of unsound mind; and the defendant E. F. has been appointed and is now the committee of his estate.

3. The said E. F. has an interest in the matters in question in this action, adverse to the interest of the defendant A. B. therein.

4. I know and am [*Continue as in paragraph 2 of* No. 74 *ante, to the end of that Form*].

118.

Consent of new guardian *ad litem* to act.

[*The same as* No. 87 *ante.*]

119.

Motion paper by lunatic defendant, for guardian *ad litem* to be assigned him in lieu of one deceased (*e*).

Formal parts: see post No. 1570.

To move on behalf of the defendant A. B., a person of unsound mind so found, by C. D. [*Continue as in* No. 88 *ante, to end*].

(*d*) The affidavit that the committee has an adverse interest, and that the proposed guardian has no adverse interest, must be made by the solicitor; if he is unable to depose to the other facts, another deponent must be joined, and the affidavit altered accordingly.

(*e*) See note (*x*) to No. 88 *ante*. For form of consent by the new guardian to act, see *ante*, No. 87; for form of affidavit in support, see *post* No. 121.

120. Petition of course for the like (*e*).

Formal parts: see post No. 1576.

The humble petition of the defendant A. B., a person of unsound mind so found, by C. D., of [*residence and addition*], his next friend.

Showeth as follows:

1. The plaintiff issued a writ of summons in this action against your petitioner, who appeared thereto, and by an order dated the —— day of ——, 187—, G. H. was assigned his guardian *ad litem*, E. F., the committee of the estate of your petitioner, having an interest in the matters in question in this action adverse to the interest of your petitioner therein.

2. The said G. H. died on the —— day of ——, 187—.

3. The said E. F. is still the committee of the estate of your petitioner, and is still interested in the matters in question in this action adversely to the interest of your petitioner therein.

4. The said C. D. has no interest [*Continue as in* No. 89 *ante, to end*].

---

121. Affidavit in support (*f*).

Formal parts: see post No. 693.

1. G. H., who by an order dated the —— day of ——, 187—, was assigned the guardian *ad litem* of the defendant A. B. in this action, died on the —— day of ——, 187—, and no person has since been assigned such guardian.

2. The defendant E. F. is still the committee of the estate of the said A. B., and is still interested in the matters in question in this action adversely to the said A. B.

3. I know and am well acquainted with [*Continue as in* No. 74 *ante, to end*].

---

122. Notice of motion or summons for removal of guardian *ad litem*, and appointment of another (*g*).

[*The same as* No. 91 *ante.*]

(*e*) See note (*e*) to No. 119 *ante.*

(*f*) See note (*d*) to No 117 *ante.*

(*g*) See note (*z*) to No. 91 *ante.* For form of consent by proposed new guardian to act, see *ante* No. 87; for form of affidavit of his fitness, see *ante* No. 117.

Section III.—Persons of Unsound Mind not so found by Inquisition.

(1) *Plaintiffs* (*a*).

123. Authority by next friend of person of unsound mind, not so found, to use his name as such (*b*).

[*The same as* No. 46 *and* No. 47 *ante, substituting the words* "a person of unsound mind not so found" *for the words* "an infant."]

124. Authority by new next friend to use his name, and to continue proceedings (*c*).

[*The same as* No. 48 *ante.*]

125. Notice of motion or summons for removal of next friend, and appointment of another (*d*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff, a person of unsound mind not so found, by G. H., of [*residence and addition*], his next friend for the purpose of this application, that [*Continue as in* No. 49 *ante, to end*].

---

126. Affidavit of fitness of proposed new next friend (*e*).

Formal parts, see post No. 693.

1. The above named C. H., the plaintiff in this action, is a person of unsound mind not so found by inquisition.

2. I know and am well acquainted with G. H. of [*Continue as in* No. 50 *ante, to end*].

(*a*) Persons of unsound mind not so found by inquisition, sue by their next friend; R. S. C. Ord. XVIII.; Dan. Pr. 83.

(*b*) See note (*c*) to No. 46 *ante.* The consent must be filed when the writ of summons is issued; 15 & 16 Vict. c. 86, s. 11.

(*c*) See note (*d*) to No. 48 *ante.*

(*d*) The practice as to the removal of a next friend and appointment of a new next friend, is the same in the case of a person of unsound mind, not so found, as in the case of an infant, as to which see note (*e*) to No. 49 *ante.* The application must be supported by an affidavit of the circumstances and of the fitness of the proposed new next friend, and the consent of the latter to act must be shown; for form of consent, see *ante* No. 48; for form of affidavit of fitness, see *post* No. 126.

(*e*) See note (*ff*) to No. 50 *ante.*

127.
Summons to substitute a next friend for one desirous to retire (*f*).

Formal parts : see post No. 881.
on the part of the plaintiff, a person of unsound mind not so found, by A. B. his next friend, that [*Continue as in* No. 51 *ante, to end*].

128.
Motion paper to appoint a new next friend in lieu of one deceased (*g*).

Formal parts : see post No. 1570.
To move on behalf of the plaintiff, a person of unsound mind not so found, by A. B. of [*Continue as in* No. 52 *ante, to end.*]

129.
Petition of course for the like (*g*).

Formal parts : see post No. 1576.
The humble petition of the plaintiff, a person of unsound mind not so found, by A. B. of [*residence and addition*], his next friend for the purpose of this application.
Showeth as follows :
1. Your petitioner [*Continue as in* No. 53 *ante, to end*].

130.
Notice of motion or summons to appoint a next friend in lieu of one incapacitated or removed (*h*).

Formal parts : see post No. 1571 *or* 881.
on the part of the plaintiff, a person of unsound mind not so found, by A. B. of [*Continue as in* No. 54 *ante, to end*].

131.
Notice of motion to dismiss action where no next friend named (*j*).

[*The same as* No. 55 *ante, substituting the words* "a person of unsound mind, not so found by inquisition" *for the words* "an infant."]

(*f*) See note (*g*) to No. 51 *ante*. For consent of the proposed new next friend to act, see *ante* No. 48 ; for form of affidavit of fitness, see *ante* No. 126.

(*g*) See note (*h*) to No. 52 *ante*. For consent of the proposed new next friend to act, see *ante* No. 48 ; for form of affidavit of fitness, see *ante* No. 126.

(*h*) See note (*k*) to No. 54 *ante*. For consent of the proposed new next friend to act, see *ante* No. 48 ; for form of affidavit of fitness, see *ante* No. 126.

(*j*) If an action is commenced in the name of a plaintiff who is in a state of mental incapacity, and no next friend is named, the defendant may move to dismiss the action ; Dan. Pr. 83.

132.

Notice of motion by defendants, to remove a next friend, and appoint a new one (*k*).

[*The same as* No. 56 *ante.*]

133.

Notice of motion by defendant, that a new next friend may be approved for plaintiff (*l*).

[*The same as* No. 57 *ante.*]

134.

Notice of motion by plaintiff, falsely alleged to be of unsound mind, that action may be dismissed with costs (*m*).

Formal parts : see post No. 1571.

on the part of A. B., the above named plaintiff.

1. That this action may be dismissed with costs; the same having been commenced without the authority of the plaintiff, who is falsely alleged in the writ of summons therein to be a person of unsound mind.

2. That the defendant's costs of this action, including the costs of this application, may be taxed as between party and party ; and that the above-named G. H. may be ordered to pay such costs to the defendants.

3. That the costs of the said A. B. of this application may be taxed as between solicitor and client ; and that the above-named G. H. may be ordered to pay such costs to the said A. B.

(2) *Defendants* (*a*).

135.

Motion paper for order as to service on defendant, who is of unsound mind, not so found (*b*).

[*The same as* No. 68 *ante.*]

(*k*) See note (*n*) to No. 56 *ante.*

(*l*) See note (*o*) to No. 57 *ante.*

(*m*) Where an action is commenced by a next friend in the name of a person alleged to be of unsound mind, but who is really of sound mind, the action will on his application be ordered to be dismissed, and the next friend must pay the costs ; *Palmer* v. *Walesby*, L. R. 3 Ch. 732.

(*a*) Persons of unsound mind, not so found by inquisition, defend by their guardian *ad litem* ; R. S. C. Ord. XVIII. ; Dan. Pr. 159.

(*b*) When a person of unsound mind not so found by inquisition, is a defendant to the action, service on the person with whom the person of unsound mind resides, or under whose care he or she is, will, unless the Court or Judge otherwise orders, be deemed good service on such defendant R. S. C. Ord. IX. 5.

136.
Summons for like (*b*).

[*The same as* No. 69 *ante.*]

137.
Affidavit in support (*c*).

Formal parts : see post No. 693.

1. The above-named defendant A. B. is a person of unsound mind not so found by inquisition.

2. [*State special circumstances for not serving the person with whom such defendant resides, or under whose care he or she is ; also the reasons for adopting the mode of service mentioned in the motion paper or the summons.*]

138.
Consent to act as guardian *ad litem* of defendant of unsound mind.

[*The same as* No. 71 *ante.*]

139.
Motion paper by a defendant of unsound mind not so found, for a guardian to be assigned him (*d*).

Formal parts : see post No. 1570.

To move on behalf of the defendant A. B., a person of unsound mind not so found, by C. D. of [*residence and addition*], his next friend for the purpose of this application, that the said C. D. may be assigned his guardian, by whom he may defend this action.

An affidavit in support accompanies.

(*b*) See note (*b*) to No. 135 *ante.*

(*c*) It does not seem necessary to adduce medical testimony as to the defendant's state of mind at this stage ; the application for the appointment of a guardian *ad litem* seems to be the proper stage for that.

(*d*) An order appointing a guardian *ad litem* to a defendant who is of unsound mind, though not so found, may be obtained on an application by motion or petition of course, supported by an affidavit proving the incapacity of the defendant, the fitness of the proposed guardian, and that he has no adverse interest ; Dan. Pr. 159. For form of affidavit, see *post* No. 141. The consent of the proposed guardian to act must also be shown ; for form of consent, see *ante* No. 71. Before the application is made, an appearance should be entered on behalf of the defendant ; Dan. Pr. 160. As to who may be appointed, see Dan. Pr. 159. For form of order on motion of course see Seton, ed. 3, 1250, No. 1 ; for form of order on petition, see *Simmons* v. *Simmons,* M. R., 12 July, 1870, Rolls' Lib. ; *MacHenry* v. *Davies,* M. R., 25 March, 1868, Rolls' Lib.

140.
Petition of course for the like (*d*).

Formal parts: see post No. 1576.

The humble petition of the defendant A. B., a person of unsound mind not so found, by C. D. of [*residence and addition*], his next friend, for the purpose of this application.

Showeth as follows:

1. The plaintiff has issued [*Continue as in* No. 73 *ante, to end*].

141.
Affidavit in support (*e*).

Formal parts: see post No. 695.

We, E. F. of [*place of business*], gentleman, the solicitor in this action for the defendant A. B., and B. E. of [*State place of residence, and add qualification to practise as a medical man; as thus:*

a Fellow of the Royal College of Physicians of London—*Or,*

a Member of the Royal College of Surgeons of London—*Or,*

a Licentiate of the Apothecaries' Company—*or as may be*],

severally make oath and say as follows:

And first I the said E. F. for myself say, as follows:

1. The said A. B. has been served with the writ of summons in this action; and has appeared thereto.

2. 3. [*Same as paragraphs* 2, 3 *of* No. 74 *ante.*]

4. The said A. B. has not been found of unsound mind by inquisition or other proceeding in lunacy [*or as may be*].

5. [*Show means of knowledge.*]

And I the said B. E. for myself say, as follows:

6. I have been in actual practice as a physician [*or as may be*] for —— years last past; and I have for —— years last past professionally attended the above named A. B. [*or as may be*].

7. I personally examined the said A. B. on the —— day of ——, 187—, at [*State where*], and on several previous occasions [*or as may be*], for the purpose of ascertaining his state of mind.

8. From such my examination of the said A. B., I am decidedly of opinion that he is of unsound mind, and wholly incapable of the management of himself or his affairs, or of the care of his property [*or as may be*]; and I have formed such opinion from [*State the grounds*].

(*d*) See note (*d*) to No. 139 *ante.*

(*e*) See Dan. Pr. 159, and note (*d*) to No. 139 *ante.* The affidavit that the proposed guardian has no adverse interest, must be made by the solicitor.

142.
Motion paper for a guardian to be assigned a person of unsound mind not so found, as respondent to a petition (*f*).

Formal parts : see post No. 1570.

To move on behalf of A. B., a person of unsound mind not so found, by C. D. of [*residence and addition*], his next friend : who has been served with the petition preferred on the —— of ——, 187—, by D. A. and others in this action [*Or*, matter] to the High Court of Justice : that the said C. D. may be assigned the guardian of the said A. B., by whom he may appear upon the said petition.

An affidavit in support accompanies.

143.
Petition of course for the like (*f*).

Formal parts : see post No. 1576.

The humble petition of A. B., a person of unsound mind not so found, by C. D. of [*residence and addition*], his next friend.

Showeth as follows :

1. Your petitioner has been served with [*Continue as in* No. 76 *ante, to the end*].

144.
Affidavit in support of motion or petition (*g*).

Formal parts : see post No. 695.

We, E. F., of [*place of business*], gentleman, the solicitor in this action [*Or*, matter] for A. B. hereinafter named, and B. E., of [*residence and description of a medical man: see* No. 141 *ante*], severally make oath and say :

And first I the said E. F. for myself say, as follows :

1. The said A. B. has been served with a copy of the petition preferred on the —— instant [*Or*, last], by D. A. and others in this action [*Or*, matter and cause], to the High Court of Justice.

2. 3. [*Same as paragraphs* 3 *and* 4 *of* No. 77 *ante.*]

4. 5. 6. 7. 8. [*Same as paragraphs* 4, 5, 6, 7, 8 *of* No. 141 *ante.*]

145.
Notice of motion by plaintiff, that a guardian may be assigned a defendant of unsound mind (*h*).

Formal parts : see post No. 1571.

on the part of the plaintiff, that Mr. Henry Leigh Pemberton, or

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(*f*) See note (*d*) to No. 139 *ante* ; Dan. Pr. 159, and note (*m*) ; Dan. Pr. 1456.

(*g*) See note (*e*) to No. 141 *ante.*

(*h*) Where no appearance has been entered to a writ of summons for a defendant who is a person of unsound mind not so found by inquisition, the plaintiff may apply to the Court or a Judge for an order, that some proper person be assigned guardian of such defendant by whom he may appear and defend the action. But no such order is to be made unless it appears upon the hearing of the application that the writ of summons was duly served,

some other proper person (*j*), may be assigned the guardian of the defendant A. B., a person of unsound mind not so found by inquisition, by whom he may appear and defend [*If an appearance has been entered for the defendant, say:* by whom he may defend] this action.

146.

Affidavit in support, where no appearance entered (*k*).

Formal parts: see post No. 695.

We, E. F., of [*place of business*], gentleman, the solicitor in this action for the plaintiff [*or as may be*], and G. H., of [*State place of residence and add qualification to practise as a medical man; as in* No. 141 *ante*], severally make oath and say as follows:

And first I, the said E. F., for myself, say, as follows:

1. [*Prove service of the writ of summons on the defendant* A. B. (*l*). *and that he has not appeared* (*m*).]

2. The said defendant A. B. has not been found of unsound mind by inquisition or other proceeding in lunacy.

and that notice of the application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon, or left at the dwelling-house of, the person with whom, or under whose care, such defendant was at the time of serving such writ of summons; R. S. C. Ord. XIII. 1. An application under this rule should be made by motion; Dan. Pr. 160; of which notice must be served in the manner mentioned in the rule. The application must be supported by an affidavit proving service of the writ of summons, that the defendant has not appeared, and that notice of the application was served in the manner required by rule 1, *supra*; for form of affidavit, see *post* No. 146. Where the defendant has appeared, but default is made by his solicitor in obtaining the appointment of a guardian *ad litem*, the plaintiff may apply by motion for the appointment of a guardian; in this case the notice of motion is served in the ordinary way on the solicitor by whom the defendant has appeared; Dan. Pr. 160, and note (*a*); and the application must be supported by an affidavit of the defendant having appeared, and of no guardian *ad litem* having been appointed; for form, see *post* No. 147. For form of order, see *Saltzbacher* v. *Solomon*, M. R., 25 June, 1863, Reg. Lib. B. 1310.

(*j*) It is usual, unless there is some friend of the defendant who is a fit and proper person, and will undertake the defence, for the solicitor to the Suitors' Fee Fund to be appointed; Dan. Pr. 160, and note (*d*); *Ibid.* 400, notes (*n*) and (*o*). As to the costs of the solicitor to the Fee Fund, where he is appointed, see Cons. Ord. XL. 4; Dan. Pr. 160, note (*c*).

(*k*) The affidavit should be in this form when no appearance has been entered for the defendant of unsound mind, and the application is under R. S. C. Ord. XIII. 1; see note (*h*) to No. 145 *ante*.

(*l*) For form of affidavit of service of the writ, see *post*, No. 346.

(*m*) For form of affidavit of no appearance having been entered, see *post* No. 287.

3. [*Show what applications have been made to the defendant's relations to undertake his defence, and that such applications have failed* (*n*).]

4. [*Prove service of the notice of motion on the person with whom or under whose care the defendant was at the time of serving the writ of summons* (*o*); *see paragraph* 3 *of* No. 79 *ante*.]

5. [*Show means of knowledge.*]

And I, the said G. H. for myself, say as follows:

6. 7. 8. [*Same as paragraphs* 6, 7, 8 *of* No. 141 *ante*.]

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147. Affidavit in support, where appearance entered (*q*).

Formal parts: see post No. 695.

We, E. F. of [*place of business*], gentleman, the solicitor in this action for the plaintiff [*or as may be*], and G. H., of [*State place of residence and add qualification to practise as a medical man: see* No. 141 *ante*), severally make oath and say as follows:

And first I, the said E. F. for myself say as follows:

1. The defendant A. B. has not been found to be of unsound mind by inquisition or other proceeding in lunacy.

2. 3. [*Same as paragraphs* 2, 3 *of* No. 80 *ante*.]

4. [*Show what applications have been made to the defendant's relations to undertake his defence, and that such applications have failed* (*r*).]

5. [*Prove service of the notice of motion on the solicitor; see post* No. 1573 (*s*).]

6. [*Show means of knowledge.*]

And I the said G. H. for myself, say as follows:

7. 8. 9. [*Same as paragraphs* 6, 7, 8 *of* No. 141 *ante*.]

(*n*) In the case of persons of unsound mind not so found by inquisition, the Court requires to be satisfied that no relative will undertake his defence before appointing the solicitor to the Suitors' Fee Fund; Dan. Pr. 400, and note (*n*).

(*o*) As to the time for, and mode of, service of the notice of motion, see R. S. C. Ord. XIII. 1, and note (*h*) to No. 145 *ante*.

(*q*) The affidavit should be in this form when an appearance has been entered for the defendant of unsound mind; see note (*h*) to No. 145 *ante*.

(*r*) See note (*n*) to No. 146 *ante*.

(*s*) Where the defendant has appeared, it is sufficient to serve the notice of motion on the solicitor; Dan. Pr. 160, note (*a*).

148.

Summons for directions as to mode of serving notice of a judgment, or order, on a person of unsound mind not so found (*t*).

Formal parts: see post No. 881.

on the part of the plaintiff, that notice of the judgment [*Or*, order] dated the —— day of ——, 187—, which pursuant to the statute 15 & 16 Vict. c. 86, s. 42, rule 8 [*Or*, 31 & 32 Vict. c. 40, s. 9], is required to be served upon B. A., a person of unsound mind not so found, may be so served [*State mode of service proposed; as thus:*]

by serving the same on him personally at the dwelling-house of D. C., situate at, *&c.*; *Or*,

by serving the same on his brother C. A., of, *&c.*;

And that a copy of the order to be made hereon may be served with such notice.

149.

Affidavit in support (*u*).

Formal parts: see post No. 693.

1. B. A., on whom notice of the judgment [*Or*, order] in this action, dated the ——, 187—, is required to be served, as being interested in the matters in question in this action as [*State shortly how; as thus:*] one of the next of kin of G. H., the intestate therein named, is a person of unsound mind; but the said B. A. has not been found of unsound mind by inquisition, or other proceeding in lunacy.

2. The said B. A. is under the care of D. C., at the Asylum kept by him for insane persons situate at, *&c.*; and is maintained there at the expense of C. A., of, *&c.*, the brother of the said B. A.

3. The nearest relations of the said B. A. are: (1) his mother M. A., of, *&c.*, widow; (2) his said brother C. A.; and (3) his sister N., the wife of L. G., of, *&c.*

4. The said C. A., the person on whom it is proposed to serve

(*t*) As to serving notice of a judgment on a person, who would otherwise be a necessary party to the action, see 15 & 16 Vic. c. 86, s. 42, rule 8; 30 & 31 Vict. c. 40, s. 9; *ante*, p. 3; Dan. Pr. 358 *et seq.* Where any person whom it is necessary to serve is a person of unsound mind not so found by inquisition, an *ex parte* application must be made to the judge by summons, for directions as to the manner of service; Cons. Ord. VII. 5; Regulations, 8 August, 1857, rule 7; Dan. Pr. 359, 360. The application must be supported by an affidavit; *Ibid.*; for form of affidavit, see *post* No. 149. A copy of the order must be served with the notice; Dan. Pr. 360. For form of order, see *Sadler* v. *Maugham*, V.-C. M. at Chambers, 3 Nov., 1869, Reg. Lib. B. 3262; and see Seton, ed. 3, 1212.

(*u*) The application must be supported by an affidavit, which must show, as far as the applicant is able:—Where, and under whose care, the person of unsound mind is residing, and at whose expense he is maintained; who are his nearest relations; and that the relations or persons upon whom it is proposed to serve the notice, have no interest in the matters in question, or, if they have, the nature of such interest, and that it is not adverse to the interest of the person of unsound mind; Regulations, 8 Aug., 1857, rule 7.

notice of the said judgment [*Or*, order] on behalf the said B. A., has an interest in the matters in question in this action as [*State shortly how; as thus:*] another of the next of kin of the said G. H.; but such interest is not adverse to the interest of the said B. A.

5. [*Show means of knowledge.*]

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150. Memorandum to be indorsed on the notice, in like case (*v*).

Formal parts: see ante No. 22.

To [*Name of person on whom the notice is to be served*].

Take notice, that, from the time of the service of this notice, you

[*Or, if served on a substitute, say:*] B. A., the person of unsound mind, in the order in this action dated the ——, 187— [*Order to substitute service*], named

will be bound [*Continue as in* No. 83 *ante, to the end; but substitute* "person of unsound mind" *for* "infant"].

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151. Motion paper for leave for person of unsound mind, who has been served with notice of a judgment, to attend the proceedings by his guardian (*w*).

Formal parts: see post No. 1570.

To move on behalf of A. B., a person of unsound mind not so found, by C. D., of [*Continue as in* No. 84 *ante, to end*].

(*v*) See Cons. Ord. XXIII. 20. For form of notice, whereon the memorandum should be indorsed, see *ante* No. 21; or it may be indorsed on a copy of the judgment or order; Dan. Pr. 362. For form of affidavit of service, see *ante* Nos. 28 and 29.

(*w*) A person of unsound mind, not so found, who is served with a notice of a judgment, and desires to attend the proceedings thereunder, must obtain leave to do so, and when he has obtained leave, he must attend by his guardian *ad litem;* 15 & 16 Vict. c. 86, s. 42, rule 8; 30 & 31 Vict. c. 40, s. 9; Cons. Ord. VII. 6; Dan. Pr. 363. In practice the applications for leave to attend the proceedings and for the appointment of a guardian, are combined in one; Dan. Pr. 363, note (*u*). The application is by motion or petition of course, supported by an affidavit; 15 & 16 Vict. c. 86, s. 42, rule 8; Cons. Ord. VII. 6; Dan. Pr. 363. For form of affidavit, see *post* No. 153. For form of consent to act as guardian, see *ante* No. 71.

152.
tition of
urse for the
e (*w*).

Formal parts : see post No. 1576.

The humble petition of A. B., a person of unsound mind not so found, by C. D., of [*residence and addition*], his next friend.

Showeth as follows :

1. Your petitioner [*Continue as in* No. 85 *ante, to end.*]

153.
fidavit in
pport (*x*).

Formal parts : see post No. 695.

We, E. F. of [*place of business*], gentleman, the solicitor in this action for A. B. hereinafter named, and B. E., of [*State place of residence, and add qualification to practise as a medical man ; see* No. 141 *ante*], severally make oath and say as follows :

And first I the said E. F. for myself, say as follows :

1. [*Same as paragraph* 1 *of* No. 86 *ante.*]

2. The said A. B. has not been found to be of unsound mind by inquisition, or other proceeding in lunacy.

3. 4. 5. [*Same as paragraphs* 3, 4, 5 *of* No. 86 *ante.*]

And I the said B. E. for myself, say as follows :

6. 7. 8. [*Same as paragraphs* 6, 7, 8 *of* No. 141 *ante.*]

154.
nsent of
w guardian
litem to act.

[*The same as* No. 87 *ante.*]

155.
tion paper
defendant,
a guardian
be assigned
n, in lieu
one de-
sed (*y*).

Formal parts : see post No. 1570.

To move on behalf of the defendant A. B., a person of unsound mind not so found, by C. D. [*Continue as in* No. 88 *ante, to end*].

(*w*) See note (*w*) to No. 151 *ante.*

(*x*) See note (*e*) to No. 141 *ante.*

(*y*) If a guardian *ad litem* dies pending the proceeding a new one must be appointed ; the application for the purpose is made by motion or petition of course, and must be supported by evidence of the death of the former guardian, and of the fitness of the proposed guardian, and also by evidence of the continued mental incapacity of the defendant ; Dan. Pr. 159, 160. For form of affidavit, see *post* No. 157 ; for form of consent of the proposed new guardian to act, see *ante* No. 87.

156. Petition of course for the like (*y*).

Formal parts: see post No. 1576.

The humble petition of the defendant A. B., a person of unsound mind not so found, by C. D., of [*residence and addition*], his next friend.

Showeth as follows:

1. The plaintiff [*Continue as in* No. 89 *ante, to end*].

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157. Affidavit in support (*z*).

Formal parts: see post No. 695.

We, E. F., of [*place of business*], gentleman, the solicitor in this action for the defendant A. B., and B. E., of [*State place of business, and add qualification to practise as a medical man: see* No. 141 *ante*], severally make oath and say as follows:

And first I the said E. F. for myself, say as follows:

1. [*Same as paragraph* 1 *of* No. 90 *ante.*]

2. The said A. B. has not been found of unsound mind by inquisition or other proceeding in lunacy.

3. 4. 5. [*Same as paragraphs* 2, 3, 4 *of* No. 74 *ante.*]

And I the said B. E, for myself say, as follows:

6. 7. 8. [*Same as paragraphs* 6, 7, 8 *of* No. 141 *ante.*]

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158. Notice of motion or summons for removal of a guardian, and appointment of another (*a*).

[*The same as* No. 91 *ante.*]

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159. Notice of motion by plaintiff or defendant, to discharge order assigning guardian (*b*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*Or*, defendant A. B.] that the order dated the —— of ——, 187—, whereby it was ordered that (*Recite so much of it as assigns a guardian*), may be discharged.

(*y*) See note (*y*) to No. 155 *ante.*

(*z*) See note (*y*) to No. 155 *ante*, and note (*e*) to No. 141 *ante.*

(*a*) The practice on the removal of a guardian *ad litem* of a defendant of unsound mind, is the same as in the case of an infant, as to which, see note (*z*) to No. 91. For form of affidavit of fitness of the proposed new guardian, see *ante* No. 157; for form of consent to act, see *ante* No. 87.

(*b*) Where the fact of the defendant's infirmity is disputed, or an order appointing a guardian *ad litem* has been irregularly obtained by the defendant, the plaintiff may move on notice to discharge the order; Dan. Pr. 161, and

Section IV.—Married Women.

(1.) *Plaintiffs* (*a*).

160. Motion paper for leave for married woman to commence an action *in formâ pauperis* without a next friend (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the Supreme Court of Judicature Acts, 1873 and 1875.

And in the matter of an intended action between A. B., the wife of C. B. as plaintiff, and E. F. and others as defendants.

To move on behalf of A. B., the wife of C. B., that she may be at liberty to institute an action against E. F. and others, for [*State object; as thus:*] the administration of the personal estate of G. H. deceased, and to prosecute the same *in formâ pauperis*, without a next friend. And that D. C., esquire, may be assigned as her counsel, and Mr. F. E. as her solicitor.

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note (*f*). The defendant on his recovery may apply by motion on notice to the plaintiff and to the guardian, that the order assigning the guardian may be discharged; Dan. Pr. 161, and note (*h*).

(*a*) A married woman cannot commence an action by herself in her own name, except in the following cases, viz.:—where her husband is *civiliter mortuus;* where she is judicially separated from him; where she has obtained a protection order; where she is suing for the recovery of property by The Married Women's Property Act, 1870, declared to be her separate property; where she is suing for the recovery of property belonging to her before marriage, and which her husband has by writing under his hand agreed with her shall belong to her after marriage as her separate property; and where the Court or a Judge has given her leave to sue without a husband and without a next friend; Dan. Pr. 84, 85; 20 & 21 Vict. c. 85, ss. 21, 26; 33 & 34 Vict. c. 93, s. 11; R. S. C. Ord. XVI. rule 8. In all other cases the wife must sue either as co-plaintiff with her husband, or by her next friend, in like manner as an infant; R. S. C. Ord. XVI. 8; Dan. Pr. 84, 85, 102, 103. In every case in which a married woman institutes an action, except where she has the status of a *feme sole*, the husband must be a party either as co-plaintiff or as defendant; Dan. Pr. 103; where the action relates to the married woman's separate estate, the husband should be made a defendant and not a co-plaintiff; *Roberts* v. *Evans*, 7 Ch. D. 830.

(*b*) Married women may by leave of the Court or a Judge, sue without their husbands and without a next friend, on giving such security (if any) for costs, as the Court or a Judge may require; R. S. C. Ord. XVI. 8. Where a married woman is unable to obtain a person of substance to act as her next friend, she may obtain an order giving her leave to commence and prosecute, or to continue, an action *in formâ pauperis*, without a next friend; Dan. Pr. 38, 39, 105. The application is made by *ex parte* motion, supported by an affidavit of the circumstances; Dan. Pr. 38. For form of affidavit, see *post* No. 161. The application must also be supported by counsel's certificate of merits; for form of certificate, see *post* No. 161a. The order is not of course; Dan. Pr. 38, note (*f*); 40, note (*c*); 105, note (*l*). As to suing *in formâ pauperis* generally, see Ord. as to Court Fees, Oct., 1875, Ord. V.; Dan. Pr. 37 *et seq.*

161.
Affidavit in support.

[*Title as in* No. 160 *ante; other formal parts: see post* No. 693.

1. I am advised, and verily believe, that I have a proper case for relief in this honourable Court, in respect of [*State object of proposed action*].

2. D. C., esquire, barrister-at-law, has consented to act as my counsel in the above-mentioned action, and Mr. F. E. has consented to act as my solicitor therein.

3. [*Show inability to obtain a next friend; as thus:*] I have applied to many of my friends and acquaintances, and have made great exertions to induce some substantial person amongst them to act as my next friend in the said action, but I cannot prevail upon any person to consent to act as such next friend.

4. I am not worth the sum of five pounds, my wearing apparel and the subject matter of the said action excepted.

5. I am desirous to commence and prosecute the said action *in formâ pauperis*, without a next friend.

161a.
Certificate of counsel.

I humbly conceive that this case is proper for relief in this Court.

X. Y.

—— day of ——, 187—.

162.
Motion paper for leave for married woman to continue an action *in formâ pauperis* without a next friend (*c*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff A. B., the wife of the defendant C. B., that she may be at liberty to prosecute this action *in formâ pauperis* [*Conclude as in* No. 160 *ante*].

163.
Affidavit in support.

Formal parts: see post No. 693.

1. [*Same as paragraph* 1, *of* No. 161 *ante.*]

2. The writ of summons in this action was issued on the —— day of ——, 187—, and has been served on the defendants, who have appeared thereto, but no statement of claim has yet been delivered in the said action [*or as may be*]. D. C., esquire [*Continue as in paragraphs* 2, 3, 4 *of* No. 161 *ante*].

5. I am desirous to prosecute this action *in formâ pauperis*, without a next friend.

(*c*) See note (*b*) to form No. 160 *ante*.

164.
Motion paper for leave for married woman to commence, or to continue, an action without a next friend (*d*).

[*The same as* No. 160 *or* No. 162 *ante, omitting the words*, "in formâ pauperis" *and the request for the assignment of counsel and solicitor*].

165.
Consent of married woman to an action being commenced in her name by a next friend (*e*).

I. A. B., of [*residence*], the wife of C. B., of [*residence and addition*], consent to an action [*Or*, proceeding], being commenced and prosecuted in the Chancery Division of the High Court of Justice, on my behalf, by C. D., of [*residence and addition*], as my next friend, for [*State succinctly the object; as thus:*] the administration of the estate of X. Y. deceased.

Dated —— day of——, 187—.

166.
Notice of motion by a married woman, that action commenced on her sole behalf, without her consent, may be dismissed (*f*).

Formal parts: see post No. 1571.

on the part of the above-named plaintiff A. B., the wife of (the defendant) C. B., by E. F., of [*residence and addition*], her next friend for the purpose of this application, that this action may be dismissed with costs; the same having been commenced without the consent of the said A. B.; and that the above-named G. H. [*Next friend in action*], may be ordered to pay to the defendants their costs of this action; and also to pay to the said E. F., the costs, if any, of the said A. B. of this action, and her costs of this application.

(*d*) Married women may by leave of the Court or a Judge, sue without their husbands and without a next friend, on giving such security (if any) for costs, as the Court or a Judge may require; R. S. C. Ord. XVI. 8. The application should be supported by an affidavit showing the woman's inability to obtain any person of substance to act as next friend; see par. 3 of No. 161 *ante*.

(*e*) An action cannot, as in the case of an infant, be commenced by a next friend on behalf of a married woman (being an adult) without her consent; and if an action should be so commenced, it will upon special motion, supported by her affidavit of the matter, be dismissed with costs to be paid by the next friend; Dan. Pr. 103, 104. The consent can not be filed; *Rogers* v. *Horn*, 26 W. R. 432.

(*f*) See note (*e*) to No. 165 *ante*. For form of affidavit in support, see *post* No. 1771.

167. The like, where the married woman is co-plaintiff (*f*).

Formal parts : see post No. 1571.
on the part of the above-named plaintiff A. B., the wife of (the defendant) C. B., by E. F., of [*residence and addition*], her next friend for the purpose of this application, that (this action having been commenced without the consent of the said A. B.) the name of the said A. B., as a party plaintiff in this action, may be struck out. And that the writ of summons and subsequent proceedings (if any) in this action, may be amended accordingly ; and that the above-named G. H. [*Next friend in action*], may be ordered to pay to the said E. F. the costs (if any) of the said A. B. of this action, and also her costs of this application.

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169. Authority by the next friend of a married woman to use his name as such (*g*).

[*The same as* No. 46 *and* No. 47 *ante, substituting the words,* "the wife of G. F., of [*residence and addition*]," *for the words,* "an infant."

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170. Summons to appoint next friend, and to carry on proceedings in case of marriage of female plaintiff after action brought (*h*).

Formal parts : see post No. 881.
on the part of the plaintiff A. H., now A. B., the wife of C. B., of [*residence and addition*], by G. H., of [*residence and addition*], her next friend for the purpose of this application, that the said A. B. may be at liberty to name the said G. H. as her next friend in this action. And that the proceedings in this action may be carried on and prosecuted by the said A. B., by the said G. H. her next friend, against the above-named defendants ; and also against the

(*f*) See note (*e*) to No. 165 *ante*. For form of affidavit in support, see *post* No. 1771.

(*g*) The authority must be filed when the writ of summons is issued ; 15 & 16 Vict. c. 86, s. 11.

(*h*) As to the practice where a female plaintiff marries after action brought, see Dan. Pr. 1378, 1383 ; and note (*ff*) to No. 9 *ante* ; as to the cases in which the action should be carried on by the husband and wife as co-plaintiffs, and those in which it should be carried on by the wife by her next friend, the husband being made a co-defendant, see Dan. Pr. 102, 103, 1378 ; *Roberts* v. *Evans*, 7 Ch. D. 830 ; *ante*, p. 74, note (*a*) ; as to the practice where a female plaintiff, who is also the next friend of her co-plaintiffs marries after action brought, see *Jones* v. *Jones*, W. N. (1869) 183 ; 17 W. R. 1003. Where a married woman plaintiff marries after action brought, and is desirous to carry on the action by her next friend, the application for leave to appoint a next friend seems to be by summons ; see *Hudson* v. *Austen*, V.-C. K. at Chambers, 2 Feb., 1864, Reg. Lib. A. 212 ; and it seems proper, as a saving of expense, to apply by the same summons for an order under Ord. L. to carry on the proceedings.

said C. B., as defendant thereto, in like manner as such proceedings might have been carried on and prosecuted by the said plaintiff A. H., now A. B., against the above-named defendants, if the said A. H. had not married.

171.
Affidavit of fitness of proposed next friend (*j*).

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, the above-named plaintiff A. H. intermarried with, and she is now the wife of, C. B. of [*residence and addition*].

2, 3, 4. [*Same as paragraphs* 2, 3, 4 *of* No. 50 *ante.*]

172.
Authority by new next friend to use his name, and to continue proceedings (*k*).

[*The same as* No. 48 *ante.*]

173.
Notice of motion or summons for leave to change a next friend (*l*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff A. B., the wife of the defendant C. B., by G. H. of [*residence and addition*], her next friend for the purpose of this application, that she may be at liberty to name the said G. H. as her next friend in this action, in the room of X. Y., her present next friend. And that

[*If before judgment, say:*] the writ of summons and subsequent proceedings in this action may be amended, by inserting the name of the said G. H. as the next friend of the plaintiff, instead of the name of the said X. Y.

[*If after judgment, say:*] the said G. H. may be named in all future proceedings in this action, as the next friend of the plaintiff, in lieu of the said X. Y.

(*j*) See note (*ff*) to No. 50 *ante.*

(*k*) See note (*d*) to No. 48 *ante.*

(*l*) If a married woman desires to change her next friend, she should apply by motion or summons, on notice to the defendants for leave to do so. It is in the discretion of the Court to grant or refuse the application; and it will be refused when there is reason to believe that the defendant's security for costs will be thereby prejudiced. If the order be made, the new next friend is usually required to give security to answer past costs, and to abide by the order of the Court as to future costs; and the retiring next friend may be required to give security for costs incurred up to the time of the change; Dan. Pr. 105, 106. For form of affidavit of fitness of the new next friend, see *ante* No. 50; for form of consent of proposed new next friend to act, see *ante* No. 48; as to giving security for costs, see *post*, Chap. XXIX., p. 969. For forms of order, see *Percy* v. *Percy*, M. R., at Chambers, 9 Decr., 1863, Reg. Lib. B. 2680; *Dixon* v. *Bagshawe*, M. R., at Chambers, 14 Decr., 1865, Reg. Lib. A. 2379; Seton, ed. 3, 1252.

174. Motion paper to appoint a next friend in lieu of one deceased (*m*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff A. B., the wife of the defendant C. B., by G. H., of [*Continue as in* No. 52 *ante, to end*].

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175. Petition of course for the like (*m*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff A. B., the wife of the defendant C. B., by G. H. of [*residence and addition*], her next friend for the purpose of this application.

Showeth as follows:

1. Your petitioner [*Continue as in* No. 53 *ante, to end*].

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176. Notice of motion or summons to appoint a next friend in lieu of one incapacitated or removed (*n*).

Formal parts: see post No. 1570 *or* 881.

on the part of the plaintiff A. B., the wife of the defendant C. B., by G. H., of [*Continue as in* No. 54 *ante to end*].

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177. Notice of motion to stay proceedings where no next friend named (*o*).

Formal parts: see post No. 1571.

on the part of the defendant X. Y., that the plaintiff A. B., the wife of C. B., of [*residence and addition*], may be ordered forthwith to name and appoint a sufficient next friend in this action. And that all further proceedings in this action may be stayed,

[*If there are other defendants than the applicant, add:*] as against the said defendant X. Y.,

[until

(*m*) Where a next friend dies, leave to appoint a new next friend may be obtained on motion or petition of course; Dan. Pr. 105. For form of affidavit of fitness of new next friend, see *ante* No. 50; for form of consent of new next friend to act, see *ante* No. 48. Where the plaintiff neglects to obtain the order, the defendant may apply, see No. 180 *post*.

(*n*) The application is by motion or summons on notice; Dan. Pr. 105. As to requiring the new next friend to give security for costs, see Dan. Pr. 105, and note (*l*) to No. 173 *ante*. For form of affidavit of fitness of new next friend, see *ante* No. 50; for form of consent of new next friend to act, see *ante* No. 48; as to giving security for costs, see *post*, Chap. XXIX., p. 969.

(*o*) See Dan. Pr. 107, note (*e*). As to the cases in which a married woman may sue without a next friend, see note (*a*) at p. 74 *ante*. As to obtaining leave to sue without a next friend, see R. S. C. Ord. XVI. 8, and Nos. 160 to 164 *ante*.

until such sufficient next friend shall have been named and appointed, or until the said plaintiff A. B. shall have obtained leave to proceed with this action without a next friend.

178.

Notice of motion or summons by defendant, that next friend give security for costs (*p*).

Formal parts: see post No. 1571 *or* 881.

on the part of the defendant X. Y., that G. H., the next friend of the plaintiff, may be ordered, within —— days, to give security in the sum of £—— (*q*), to answer costs. And that in the meantime all further proceedings in this action may be stayed,

[*If there are other defendants than the applicant, add:*] as against the said defendant X. Y.

179.

Affidavit in support.

Formal parts: see post No. 693.

1. [*State facts showing that the next friend is in insolvent circumstances, or is not a person of substance, and has no means of paying the defendant's costs, if judgment should not be given for the plaintiff.*]

2. [*Show means of knowledge.*]

180.

Notice of motion by a defendant, that a married woman plaintiff may name a new, in lieu of a deceased, next friend (*r*).

Formal parts: see post No. 1571.

on the part of the defendant A. B., that the plaintiff C. D. may be ordered, within (one month) from this time, to name and appoint a new and sufficient next friend in this action, in lieu of E. F., now deceased; Or, in default thereof,

[*If before judgment, say:*] that this action may stand dismissed with costs (*s*).

[*Or, if after judgment, say:*] that all further proceedings in this action may be stayed with costs.

(*p*) If the next friend of a married woman is in insolvent circumstances, the Court will order the action to be stayed until he gives security for costs; Dan. Pr. 104. The application should be supported by an affidavit showing the circumstances of the next friend; see *post* No. 179. As to giving security for costs, see *post*, Chap. XXIX., p. 969; for form of application by a defendant to dismiss the action where an order to give security is not complied with, see *post* Nos. 1819, 1821, and note (*s*) thereto.

(*q*) As to the amount of the security, see *post*, p. 966, note (*a*).

(*r*) See Dan. Pr. 106, and note (*s*).

(*s*) As to the effect of an order in this form, see *Whistler* v. *Hancock*, 3 Q. B. D. 83; note (*d*) to No. 739 *post*.

181. The like, to stay proceedings till a new, in lieu of a bankrupt, next friend is appointed (*t*).

Formal parts: see post No. 1571.

on the part of the defendant A. B., that the plaintiff C. D. may be ordered, within (one month) from this time, to name and appoint a new and sufficient next friend in this action, in lieu of E. F., who has become bankrupt; but without prejudice to the liability of the said E. F. to the costs already incurred by the defendant A. B. in this action; and that all further proceedings in this action may be stayed until such new and sufficient next friend shall have been named and appointed, or until the plaintiff shall have obtained leave to proceed with this action without a next friend.

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(2) *Defendants* (*a*).

(*t*) See Dan. Pr. 106, and note (*t*). For forms of order, see *Wilton* v. *Hill*, L. JJ., 25 Nov., 1852, Reg. Lib. B. 135; *Macann* v. *Borradaile*, W. N. (1867), 252, 283; 16 W. R. 74, 175. In *D'Œchsner* v. *Scott*, M. R., 27 May, 1857, Reg. Lib. A. 1044, the order stayed proceedings until security for costs was given, or the plaintiff obtained an order to sue *in formâ pauperis*.

(*a*) The general rule is that the husband must be made a co-defendant to every action brought against his wife; even where the latter is sued in respect of her separate estate; *Hancocks* v. *Lablache*, 26 W. R. 402; the exceptions to this rule being the cases in which the husband himself is plaintiff, those in which he is *civiliter mortuus*, those in which the husband and wife are judicially separated, those in which the wife has obtained a protection order, and those in which the action is brought to recover a debt of the wife contracted before marriage; Dan. Pr. 160; 20 & 21 Vict. c. 85, ss. 21, 26; Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 12; 37 & 38 Vict. c. 50. Where they are thus made co-defendants, the general rule is that they must join in their defence; and a defence put in by either of them separately from the other, without the leave of the Court, is irregular, and upon the application of the plaintiff may be struck out; Dan. Pr. 164, 166, 422, 423. Where they both make default in making any defence to the action, the plaintiff may proceed to obtain judgment by default against them, as in the case of ordinary defendants; *Alexander* v. *Osborne*, 11 Jur. 444; 16 L. J. (N. S.) 368; Morg. 511, 512; Ayckbourn, Ch. Pr. ed. 9, 598. But although the general rule is that husband and wife who are co-defendants to an action, should join in their defence, yet, under certain circumstances, either of them may obtain an order giving him or her leave to make a separate defence from the other of them; R. S. C. Ord. XVI. 8; Dan. Pr. 163, 164, 165, 422, 423; or the plaintiff may, under certain circumstances, obtain an order that the wife put in a defence separately from her husband; Dan. Pr. 165, 423, 424. When an order has been made for the wife to defend separately from her husband, she seems, for the purposes of the particular action, to be in the same position as a *feme sole*; she defends without joining any guardian or other person with her; Dan. Pr. 166; and the plaintiff may proceed against her by default in the same manner as against an ordinary defendant; Dan. Pr. 163, and note (*c*); *Ibid.*, 167, and note (*i*); *Ibid.*, 422, 423, and notes (*s*) and (*t*); *Ibid.*, 447, and note (*b*); Morg. ed. 4, p. 435. The time for a married woman defendant, with

182.

Motion paper for leave to serve married woman as a *feme sole* (*b*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff, that he may be at liberty to serve the writ of summons in this action on A. B., the wife of the defendant C. B., without serving the same on the said defendant C. B. And that such service may be deemed good service on the said A. B., as if she were a *feme sole*.

An affidavit in support accompanies.

183.

Affidavit in support.

Formal parts : see post No. 693.

1. The defendant C. B., the husband of the defendant A. B., is now residing at ——, out of the jurisdiction of this honourable Court [*or as may be*].

2. The subject-matter of this action in so far as the same relates to the said defendants C. B., and A. his wife, arises in right of the said defendant A. B.

3. [*Show means of knowledge.*]

184.

Motion paper by wife for leave to defend separately (*c*).

Formal parts : see post No. 1570.

To move on behalf of the defendant C. B., the wife of the defendant A. B., for leave for her to defend this action separate from him.

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respect to whom an order has been made for her to defend separately, to put in her defence, runs from the date of the order ; Dan. Pr. 166, 422. If a female defendant marries pending the action, an order should be obtained under R. S. C. Ord. L., to carry on the proceedings against her husband ; see *ante* Nos. 6 and 7.

(*b*) When husband and wife are both defendants to the action, service on the husband will be deemed good service on the wife ; but the Court or a judge may order that the wife ; be served with or without service on the husband ; R. S. C. Ord. IX. 3. It would seem that an order to serve the wife without serving the husband, can only be obtained where the husband is abroad or cannot be served, and the subject-matter of the action arises in right of the wife ; Dan. Pr. 163, 368. For form of order, see Seton, ed. 3, 1246, No. 9.

(*c*) See R. S. C. Ord. XVI. 8 ; and *ante* p. 81, note (*a*). For the cases in which a married woman who is a co-defendant with her husband may obtain an order to defend separately from him, see Dan. Pr. 164, and notes. The order may be obtained on motion or petition of course ; Dan. Pr. 164. For form of order on motion, see Seton, ed. 3, 1254, No. 3 ; and on petition, see *Miller* v. *Miller*, M. R., 13 May, 1870, Rolls' Lib. ; *Wood* v. *Mercer*, M. R., 7 June, 1870, Rolls' Lib. A defence put in by a married woman, who is co-defendant with her husband, separately from her husband and without leave, is irregular, and may on the plaintiff's application be struck out ; Dan. Pr. 166.

185. Petition of course for the like (c).

Formal parts: see post No. 1576.

The humble petition of the defendant C. B., wife of the defendant A. B.

Showeth as follows:

1. The plaintiff lately issued a writ of summons in this action against the said A. B. and your petitioner; and the said A. B. has appeared thereto for himself and your petitioner.

Or, and the said A. B. has appeared for himself only, and your petitioner has appeared for herself, to the said writ of summons.

2. [*State the special grounds for the order; as in the following examples:*]

(*a*) The matters in question in this action arise in right of your petitioner; and she and her said husband A. B. have separate interests therein.

(*b*) The matters in question in this action arise in right of your petitioner; and she and her said husband A. B. are living separate and apart.

(*c*) Your petitioner's said husband A. B. is a person of weak understanding—*If so:* and by an order, dated the —— day of ——, 187—, E. F. was appointed his guardian to defend this action.

(*d*) Your petitioner resides at [*State where*], within the jurisdiction of this honourable Court; but her said husband A. B. resides at [*State where*], out of the said jurisdiction.

Your petitioner therefore humbly prays, that she may be at liberty to defend this action separate from her husband, the defendant A. B.

And your petitioner will ever pray, *&c.*

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186. Notice of motion by husband for leave to defend separately from his wife (*d*).

Formal parts: see post No. 1571.

on the part of the defendant A. B., that he may be at liberty to defend this action separately from the defendant C. B., his wife.

(*c*) See note (*c*) to No. 184 *ante*.

(*d*) See *ante*, p. 81, note (*a*). A defence put in by a husband who is co-defendant with his wife, separately from his wife and without leave, is irregular, and may on the plaintiff's application be struck out; Dan. Pr. 164. As to the cases in which leave may be obtained, see Dan. Pr. 163. The application for leave is by motion, of which notice must be given to the plaintiff, and *quære* whether notice should not be given to the wife also; Dan. Pr. 163. The application must be supported by an affidavit of the husband verifying the circumstances; Dan. Pr. 163. For form of affidavit, see *post* No. 187. For form of order, see Seton, ed. 3, 1255, No. 5.

187.
Affidavit in support.

Formal parts : see post No. 693.

1. On the —— day of ——, 187—, I entered an appearance in this action for myself, and for the defendant C. B., my wife [*Or*, for myself only ; and an appearance for the defendant C. B., my wife, has since been entered by her].

2. On the —— day of ——, 187—, the plaintiff delivered his statement of claim in this action, but I have not yet put in a statement of defence thereto.

3. [*Show special grounds for the application, as thus :*] My wife, the said defendant C. B. has, for —— years now last past, lived, and is now living, separate and apart from me ; and to the best of my knowledge, information, and belief, she is now residing at [*State where*]. My said wife is not in any manner under my influence or control.

[*Or thus :*] My wife, the said defendant C. B. is living with me ; but she obstinately refuses to join with me in defending this action ; and I am wholly unable to persuade or induce her to do so. I am not in any manner conniving at, or colluding with her in, such her refusal.

4. The facts hereinbefore stated are within my own knowledge.

188.
Notice of motion by plaintiff, that married woman defendant may defend separately from her husband a co-defendant (*e*).

Formal parts : see post No. 1571.

on the part of the plaintiff, that the defendant A. B., the wife of the defendant C. B., may be ordered, within eight days, to put in a statement of defence or demurrer to the plaintiff's statement of claim, separately from her said husband.

189.
Affidavit in support.

Formal parts : see post No. 693.

1. On the —— day of ——, 187—, the defendants C. B. and A. his wife, [*Or*, the defendant A. B. the wife of the defendant C. B.]. entered an appearance in this action.

2. On the —— day of ——, 187—, the plaintiff's statement of claim in this action, was delivered to the said defendants C. B. and

(*e*) See *ante*, p. 81, note (*a*). Where no order for a married woman who is co-defendant with her husband to defend the action separately has been obtained by her or her husband, the plaintiff may in certain cases obtain an order for her to defend separately ; Dan. Pr. 165, 423, 424. As to the cases in which the plaintiff may obtain such an order, see Dan. Pr. 165, 423, 424. The application is by motion, of which notice should be given to the wife ; Dan. Pr. 165 ; the application must be supported by an affidavit of the circumstances ; *Ibid.* ; for form, see *post* No. 189. For form of order, see Seton, ed. 3, 1255, No. 4. The time for putting in the defence runs from the date of the order ; Dan. Pr. 166, 422.

A. his wife [*Or*, to the said defendant A. B.] ; but no defence has yet been put in on behalf of the said defendant A. B.

3. [*State the special grounds for the application ; as thus :*] By an order, dated the —— day of ——, 187—, leave was given to the defendant C. B. to defend this action separately from his wife the said defendant A. B. ; and he has since put in his separate defence in this action accordingly; but no order has yet been obtained by or for the said defendant A. B. to defend this action separately from her said husband.

[*Or thus :*] The defendant C. B. has, without an order, put in the defence of himself only in this action ; and no order has yet been obtained by or for the defendant A. B. to defend this action separately from her husband.

[*Or thus :*] The said defendant A. B. refuses to join with her said husband in defending this action.

[*Or thus :*] The said defendant C. B. is resident at [*State where*], out of the jurisdiction of this honourable Court. His wife, the defendant A. B., is resident within such jurisdiction.

[*Or thus :*] The matters in question in this action arise in right of [*Or*, relate to the separate estate of] the said defendant A. B., and she and the said defendant C. B. are living separate and apart.

[*Or thus :*] The said defendant C. B. is a person of weak or unsound mind, but has not been so found by proceedings in lunacy ; [*If so, add :*] and by an order, dated the —— day of ——, 187—, E. F. was appointed his guardian to defend this action.

4. [*Show means of knowledge.*]

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190. Notice of motion to strike out separate defence put in by husband or wife without leave (*f*).

Formal parts : see post No. 1571.

on the part of the plaintiff, that the statement of defence [*Or*, the demurrer] delivered by the defendant C. B., the wife of the defendant A. B. [*Or*, by the defendant A. B., the husband of the defendant C. B.], in this action on the —— day of ——, 187—, may be struck out, on the ground that the said defendant has not obtained leave to defend this action separately from her husband [*Or*, from his wife]. And that the said defendant C. B. [*Or*, A. B.] may be placed in the same position as if she [*Or*, he] had not delivered the said statement of defence [*Or*, the said demurrer].

[*Where the application is made against the male defendant, add :*] And that the said A. B. may be ordered to pay the costs of this application.

(*f*) Where husband and wife are co-defendants to an action they must join in their defence, unless either of them obtains leave to sever; and a separate defence put in without such leave is irregular, and the plaintiff may apply to have it struck out.

Section V.—Persons Trading in Co-partnership.

(1) *Plaintiffs* (*a*).

191. Demand, in writing of names and places of residence of persons constituting the plaintiff firm (*b*).

Formal parts: see ante No. 21.

Take notice that you are hereby required by [*Or*, on behalf of] the defendant C. D., to declare forthwith, pursuant to the Rules of the Supreme Court, Order VII., rule 2, the names and places of residence of all the persons constituting the firm of "A. B. & Co." named as plaintiffs in the writ of summons in this action.

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192. Reply thereto.

Formal parts: see ante No. 21.

Take notice that the names and places of residence of all the persons constituting the firm of "A. B. & Co.," named as plaintiffs in the writ of summons in this action, are as follows: D. A., whose place of residence is ——, in the county of ——; F. B., whose place of residence is, *&c.*; and G. H., whose place of residence is, *&c.*

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193. Notice of motion or summons to stay proceedings until demand complied with (*c*).

Formal parts: see post No. 1571 or 881.

on the part of the defendant C. D., that all proceedings in this action may be stayed,

[*If there are other defendants than the applicant, add:*] as against the defendant C. D.,

until a statement of the names and places of residence of all the persons constituting the firm of "A. B. & Co.," named as plaintiffs in the writ of summons in this action, shall have been furnished to the defendant C. D., or his solicitor. And that the plaintiffs A. B. & Co. may be ordered to pay to the applicant his costs of this application to be taxed.

(*a*) Any two or more persons claiming as co-partners may sue in the name of their firm, if any; R. S. C. Ord. XVI. 10. As to execution against partners, see R. S. C. XLII. 8; and *post*, p. 688.

(*b*) When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors must, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitors fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. When the names of the partners are so declared, the action proceeds in the same manner, and the same consequences in all respects follow, as if they had been named as the plaintiffs in the writ. But all proceedings, nevertheless, continue in the name of the firm; R. S. C. Ord. VII. 2.

(*c*) See R. S. C. Ord. VII. 2; note (*b*) to No. 192 *ante*.

194. Affidavit in support.

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, I served Mr. E. F., the solicitor for the plaintiffs in this action [*Or*, I served the plaintiffs in this action], with a demand in writing by [*Or*, on behalf of] the above-named defendant C. D., requiring the said Mr. E. F. [*Or*, the plaintiffs] to declare forthwith the names and places of residence of all the persons constituting the firm of "A. B. & Co.," named as plaintiffs in the writ of summons in this action by [*Here state how service effected; see ante* No. 28.]

2. [*Show that plaintiffs or their solicitor have failed to comply with the demand, either by not furnishing the statement required, or by furnishing an insufficient or untruthful statement.*]

3. [*State means of knowledge.*]

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195. Summons for statement on oath of names of persons who are co-partners in the plaintiffs' firm (*d*).

Formal parts: see post No. 881.

on the part of the defendant C. D., that the plaintiffs may be ordered, within —— days, to furnish to the defendant C. D. a statement in writing of the names of the persons who are co-partners in the firm of "A. B. & Co.," named as plaintiffs in the writ of summons in this action, such statement to be verified on oath.

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196. Notice of motion for dismissal of action on continued non-delivery of statement (*e*).

Formal parts: see post No. 1571.

on the part of the defendant C. D., that the plaintiffs may be ordered, within —— days, to furnish to the defendant C. D. a statement of the names and places of residence of all the persons constituting the firm of "A. B. & Co."

Or, a statement of the names of the persons who are co-partners in the firm of "A. B. & Co."

named as plaintiffs in the writ of summons in this action, such statement to be verified by affidavit. And that in default of such statement being so furnished, the plaintiffs' action may be dismissed without further order (*f*).

[*If there are other defendants than the applicant, add:*] as against the defendant C. D.

with costs to be paid by the plaintiffs to the said defendant C. D.

(*d*) Where two or more persons claiming as co-partners sue in the name of their firm, any defendant to the action may apply by summons to a Judge for a statement of the names of the persons who are co-partners in such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct; R. S. C. Ord. XVI. 10.

(*e*) In case of continued non-compliance with a demand under R. S. C. Ord. VII. 2, or with an order under R. S. C. Ord. XVI. 10, the proper course seems to be to apply to dismiss the action.

(*f*) As to the effect of an order in this form, see *Whistler* v. *Hancock*, 3 Q. B. D. 83; note (*d*) to No. 739 *post*.

(2) *Defendants* (*g*).

197.

Summons for statement of the names of the persons who are co-partners in the defendants' firm (*h*).

Formal parts : see post No. 881.

on the part of the plaintiff, that the defendants may be ordered, within —— days, to furnish to the plaintiff a statement in writing of the names of the persons who are co-partners in the firm of "D. & Co.," named as defendants in the writ of summons in this action, such statement to be verified on oath.

Section VI.—Paupers (*a*).

(1) *Plaintiffs.*

198.

Petition of course for leave to prosecute a suit *in formâ pauperis* (*b*).

Formal parts : see post No. 1576.

The humble petition of the plaintiff.

Showeth as follows :

[*In an action :*] 1. Your petitioner, on the —— of ——, 187—, issued a writ of summons in this action against the above-named defendant : and by the indorsement on the said writ of summons your petitioner claimed [*here set out the indorsement of claim on the writ.*]

[*In a cause by administration summons :*] 1. On the —— of ——, 187—, a summons was taken out in this cause on behalf of your petitioner, as claiming to be one of the next of kin [*or as may be*] of the above-named A. B., against the above named de-

(*g*) Any two or more persons being liable as co-partners, may be sued in the name of their firm, if any ; R. S. C. Ord. XVI. 10. So a person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm ; R. S. C. Ord. XVI. 10*a* (R. S. C. June, 1876, rule 8). As to the service of the writ of summons upon partners or upon a person carrying on business in the name of a firm, apparently consisting of more than one person, see R. S. C. Ord. IX. rules 6, 6*a* (R. S. C. June, 1876, rule 4) ; and *post*, note (*a*) at p. 137. As to the mode of appearance where partners or a person carrying on business in the name of a firm, are or is sued in the firm's name, see R. S. C. Ord. XII. 12, 12*a* (R. S. C. June, 1876, rule 6), and *post*, note (*b*) at p. 147. As to execution against partners, see R. S. C. Ord. XLII. 8 ; and *post*, p. 688.

(*h*) Where two or more persons liable as co-partners are sued in their firm's name, any party to the action may apply by summons to a judge for a statement of the names of the persons who are co-partners in such firm, to be furnished in such manner, and verified on oath or otherwise as the Judge may direct ; R. S. C. Ord. XVI. 10.

(*a*) As to when a person may sue or defend *in formâ pauperis*, and the mode of admission, see Dan. Pr. 37—45, 140—142 ; Cons. Ord. VII. 8—11 ; Cons. Ord. XL. 5 ; Ord. as to Court Fees, Octr., 1875, Ord. V.

(*b*) See Dan. Pr. 41. For order in like case, see Seton, ed. 3, 1271, No. 6. The petition should be accompanied by a copy of the writ or summons.

fendant, as his administrator, for an order for the administration of the personal estate of the said A. B. [*or as may be*]; and a duplicate of the said summons has been duly filed at the Record and Writ Clerks' office.

2. [*State, shortly, the subsequent proceedings; as thus:*] The defendant has appeared to the said writ [*Or*, summons]; but no further proceeding in the said cause has been had.

3. Your petitioner is not worth five pounds: his wearing apparel and the subject-matter of this cause only excepted.

Your petitioner therefore humbly prays, that he may be at liberty to prosecute this cause *in formâ pauperis*; and that C. D., esquire, who has subscribed this petition: thereby certifying your petitioner's just cause of suit: may be assigned as his counsel, and Mr. E. F. for his solicitor.

And your petitioner will ever pray, &c.

199.

Certificate of counsel subscribed to petition (*c*).

I humbly conceive that this case is proper for relief in this Court.

[*Signature of Counsel.*]

——, 187—.

200.

Affidavit in support (*d*).

In the High Court of Justice,
Chancery Division.

[*Title, and reference to the record.*]

I, A. B., of, *&c.*, the above-named plaintiff, make oath and say, that I am not worth the sum of five pounds: my wearing apparel and the subject-matter of this cause only excepted.

Sworn [*&c.: post* No. 696].

201.

Motion paper for leave to prosecute a claim *in formâ pauperis* (*e*).

Formal parts: see post No. 1570.

To move on behalf of A. B. of [*residence and addition*]: who claims to be [*State what; as thus:*] a creditor upon the estate of C. D., the testator in this cause: that he may be at liberty to prosecute his claim in this cause [*or as may be*] *in formâ pauperis*; and that E. F., esquire, may be assigned as his counsel, and Mr. G. H. for his solicitor, on such claim.

(*c*) See Dan. Pr. 40; Cons. Ord. VII. 8.

(*d*) See Dan. Pr. 41.

(*e*) See Dan. Pr. 39; *Ibid.*, 1093, note (*x*). For order in like case, see Seton, 1271, No. 8. The order can only be obtained on *ex parte* motion; Dan. Pr. 39, note (*q*).

202.
Motion paper for leave to appeal *in formâ pauperis* (*f*).

Formal parts: see post No. 1570.

To move on behalf of (the plaintiff) A. B., that he may be at liberty to prosecute his appeal from the judgment [*Or*, order] made in this action [*Or*, cause], and dated the —— day of 187—, *in formâ pauperis*; and that C. D., esquire, may be assigned as his counsel, and Mr. F. E. for his solicitor, on such appeal.

203.
Application by a married woman for leave to sue *in formâ pauperis* without a next friend.

[*Same as* No. 160 *to* No. 163 *ante*.]

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(2) *Defendants.*

204.
Petition of course for leave to defend *in formâ pauperis* (*g*).

Formal parts: see post No. 1576.

The humble petition of the above-named defendant C. D. Showeth as follows:

[*In an action:*] 1. The plaintiff has commenced this action against your petitioner—*If so:* who has appeared thereto (*h*).

[*In a cause by administration summons:*] 1. An administration summons in this cause has been taken out on behalf of the above-named plaintiff, against your petitioner—*If so:* who has appeared thereto (*i*).

3. Your petitioner is not worth five pounds: his wearing apparel and the subject-matter of this action [*Or*, cause] only excepted.

Your petitioner therefore humbly prays, that he may be at liberty to defend this action [*Or*, cause] *in formâ pauperis*; and that B. C., esquire, may be assigned as his counsel, and Mr. D. E. for his solicitor.

And your petitioner will ever pray, *&c.*

(*f*) As to counsel's certificate in this case, see Dan. Pr. 40.

(*g*) For order in like case, see *D'Alteyrac* v. *Long*, M. R. 18 Mar., 1870, Rolls' Lib.; and see Dan. Pr. 140—142, 461. The petition need not be accompanied by a certificate of counsel; Dan. Pr. 142.

(*h*) The defendant need not enter an appearance before applying for the order; Dan. Pr. 142, note (*l*), 461.

(*i*) See last note.

205. Affidavit in support (*k*).

[*The same as* No. 200 *ante, but substituting* "defendant" *for* "plaintiff."]

206. Notice of motion to discharge, for irregularity, order to sue or defend *in formâ pauperis* (*l*).

Formal parts: see ante No. 1571.

on the part of (the defendant) A. B., that the order dated the ——, 187—, made on the application of (the plaintiff), whereby it was ordered that (the plaintiff) should be at liberty to prosecute this suit [*or as may be*] *in formâ pauperis*, may be discharged.

(*k*) See Dan. Pr. 142.

(*l*) See Dan. Pr. 41. For the grounds on which a party will be dispaupered, see Dan. Pr. 41, 43, 44.

CHAPTER III.

PLAINTIFF'S PROCEEDINGS BEFORE ISSUING THE WRIT OF SUMMONS.

SECTION I.—NOTICE OF THE ACTION (*a*).

207.

Notice of the action (*aa*).

To C. D., of [*address and addition*], and E. F., of [*address and addition*].

I, A. B. [*Or*, I, G. H., of [*address*], as solicitor for and on behalf of A. B. (*b*)] of [*address and addition*], do hereby, according to the form of the statute in such case made and provided, give you notice that I [*Or*, the said A. B.] will, at or after the expiration of one calendar month (*c*) from the time of your being served, with this notice, cause a writ of summons to be issued out of her Majesty's High Court of Justice against you at my suit [*Or*, at the suit of the said A. B.], and proceed thereon according to law, for that [*Here state the cause of action with clearness and certainty, and so as to inform the person served of the ground of complaint* (*d*)].

Dated this —— day of ——, 187—.

Yours, &c.,

A. B.,

[*Or*, G. H., solicitor for A. B. (*e*).]

(*a*) Many statutes require notice to be given before an action can be brought in respect of any act done in pursuance of them; Chitty's Arch. ed. 12, 1301; see 10 Geo. IV. c. 44, s. 41; 1 & 2 Wm. IV. c. 41, s. 19; 2 & 3 Vict. c. 71, s. 53; 8 & 9 Vict. c. 87, s. 117; 9 & 10 Vict. c. 95, s. 138; 11 & 12 Vict. c. 44, s. 9. As to the notice in general, see Chitty's Arch. ed. 12, 1301 to 1306. As to the form and contents of the notice, see *Ibid.*, 1303, 1304. The service should be effected as directed by the particular statute; generally it is sufficient to serve it personally or to leave it for the intended defendant at his usual place of abode; Chitty's Arch. 1305.

(*a a*) For forms, see Chitty's Forms, ed. 10, pp. 34-37.

(*b*) Sometimes the party himself must give the notice; sometimes it may be given by his solicitor or other agent on his behalf; Chitty's Arch. 1303.

(*c*) One calendar month's notice is sufficient in every case; 5 & 6 Vict. c. 97, s. 4.

(*d*) As to the contents of the notice, see Chitty's Arch. 1304.

(*e*) The notice should be signed; Chitty's Arch. 1304, 1305.

208. Indorsement on notice (*f*).

A. B., of [*address and addition*].
Or, G. H., of [*address*], solicitor for A. B., of [*address and addition*].

SECTION II.—DEMAND OF WARRANT IN ACTION AGAINST A CONSTABLE (*g*).

209. Demand of perusal and copy warrant (*h*).

To C. D., of [*address*].
I, A. B., of [*address and description*],
Or, I, G. H., of [*address*], solicitor for A. B., of [*address and description*],
do hereby, according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant by virtue or under colour whereof you did on or about the —— day of ——, 187— [*Here describe the acts complained of*].

Dated —— day of ——, 187—.

Yours, &c.,
A. B.,
[*Or*, G. H., solicitor for A. B.]

(*f*) Sometimes the statute repuiring the notice to be given, requires the name and place of abode of the intended plaintiff, or his solicitor, to be indorsed on the notice; Chitty's Arch. 1305.

(*g*) When an action is intended to be brought against a constable or other officer, or any person acting by his order or in his aid, for anything done by him in obedience to a warrant under the hand and seal of a justice of the peace, a demand in writing of the perusal and copy of such warrant, signed by the party demanding the same, or by his solicitor, must be made or left at the usual place of abode of such constable or officer, by the plaintiff, or his solicitor, or agent; 24 Geo. II. c. 44, s. 6. As to this enactment, and the cases decided thereon, see Chitty's Arch. ed. 12, 1276; and also Chitty's Forms, ed. 10, 37, note (*a*).

(*h*) For form, see Chitty's Forms, ed. 10, 37.

CHAPTER IV.

THE WRIT OF SUMMONS.

SECTION I.—THE FORM OF THE WRIT.

210. Writ of summons for service within the jurisdiction (*a*).

In the High Court of Justice,
Chancery Division (*b*).
Master of the Rolls.
[*Or*, Vice-Chancellor Malins.
Or, Vice-Chancellor Bacon.
Or, Vice-Chancellor Hall (*c*).]
District Registry of —— (*d*).

(*a*) See Rules of the Supreme Court, Ord. II. 3, and Appendix (A), part 1, No. 1. All suits which have hitherto been commenced by bill or information in the High Court of Chancery are to be instituted in the High Court of Justice by a proceeding to be called an action; R. S. C. Ord. I. 1. Every action in the High Court is to be commenced by a writ of summons; *Ibid.*, Ord. II. 1. Writs of summons are to be prepared by the plaintiff or his solicitor, and are to be written or printed, or partly written and partly printed, on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a half wide; R. S. C. Ord V. 5; *Ibid.*, Ord. LVI. 2.

(*b*) Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11; R. S. C. Ord. II. 1; *Ibid.*, Ord. V. 4.

(*c*) The writ must be marked with the name of one of the Judges of the Chancery Division of the High Court; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 33, 42; R. S. C. Ord. V., 4, 4*a* (R. S. C. June, 1877). By order of the Lord Chancellor, of June, 1877, no cause or matter may, until further order, be assigned to Mr. Justice Fry, by the same being marked by the plaintiff or petitioner with the name of the said Mr. Justice Fry.

(*d*) This statement is only necessary when the writ is issued out of a district registry; R. S. C. Ord. V. 8 (R. S. C. June, 1876). As to the establishment of district registries, and the appointment of district registrars, see the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 60; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 13; Ord. in Council, 12th August, 1875. A writ of summons may be issued out of a district registry; Sup. Cot. Jud. Act, 1873, ss. 60, 64; *Oger* v. *Bradnum*, 1 C. P. D. 334. When the action is thus commenced in a district registry, if the sole defendant appears, or all the defendants appear, or all the defendants who enter an appearance appear, in the

187—. B. No. — (*e*).

In the matter of the estate of F. B., deceased (*f*).

Between A. B. . . . Plaintiff,

and

C. D. and E. F. . . . Defendants (*g*).

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

registry, the action proceeds there, subject to the power of removal; R. S. C. Ord. XII. 4. When an action proceeds in the district registry, all proceedings in the action, down to and including final judgment, must be taken in the district registry, except where, by the Rules of the Supreme Court, it is otherwise provided, or the Court or a judge shall otherwise order; Sup. Cot. Jud. Act, 1873, s. 64; R. S. C. Ord. XXXV. 1 (R. S. C. June, 1876, rule 12). In respect of such proceedings the district registrar has the same jurisdiction as a judge at chambers, except such jurisdiction as by the Rules of Court a Master of the Queen's Bench, Common Pleas, or Exchequer Division, is precluded from exercising; R. S. C. Ord. XXXV. 4; *Ibid.*, Ord. LIV. 2; he has no jurisdiction to try an action, nor to direct judgment to be entered, nor to appoint a receiver, nor to order a sale; *Irlam* v. *Irlam*, 2 Ch. D. 608; *Brassington* v. *Cussons*, 24 W. R. 881; *Re Smith*, *Hutchinson & Ward*, 6 Ch. D. 692; *McDonald* v. *Foster*, 25 W. R. 687, *per* Jessel, M. R.; *Re Capper*, 26 W. R. 434. Applications to a district registrar are made by summons; R. S. C. Ord. XXXV. 5; Ord. LIV. 1. Every order or decision of a district registrar is subject to appeal to the judge to whom the action is assigned; R. S. C. Ord. XXXV. 7, 10; and the district registrar may himself refer any matter to that judge; *Ibid.*, rules 6, 10. The costs allowed where the action proceeds in a district registry are the same as those allowed where it proceeds in the London office; R. S. C. (Costs) Sched. r. 34. Writs of execution upon any judgment or order issue from the district registry; *Ibid.*, rule 3; and costs upon any judgment are taxed in the registry; *Ibid.*, rule 3. As to the removal to London of actions proceeding in the district registry, see Sup. Cot. Jud. Act, 1873, s. 65; R. S. C. Ord. XXXV. 11 to 14; and *post*, pp. 990, 991.

(*e*) Here put in the date of the year, the initial letter of the name of the plaintiff, or (where there are several plaintiffs) of the firstly-named plaintiff, or (in an administration action) the name of the deceased, and the number of the action in the Cause Book of the Clerks of Records and Writs, or of the district registrar; see R. S. C. Ord. V. 8. This distinctive mark is called the "Reference to the Record;" it is required to be stamped on the first page of every decree, order, report, certificate, petition, or document made, presented, or used in any action in the Chancery Division; Cons. Ord. I. 48; by the Chancery Funds Consolidated Rules, 1874, rule 2, the term "Title of the Cause" includes the "Reference to the Record." The reference is also generally used throughout the Appendices to the Rules of the Supreme Court. The use of it on every document will be found of great convenience to the practitioner.

(*f*) As to this statement, see *Eyre* v. *Cox*, 24 W. R. 317. It is necessary only in the case of actions to administer the estate of a deceased person; in such a case the reference to the record contains the initial letter of the name of the deceased person whose estate it is sought to administer, and not of the plaintiff.

(*g*) For other forms of title, see *post* No. 212.

To ——, of ——, in the county of ——, and ——, of ——, in the county of ——.

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Chancery Division of our High Court of Justice, in an action at the suit of —— ; and take notice, that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, 187— (*h*).

N.B.—This writ is to be served (*i*) within twelve calendar months from the date thereof, or, if renewed (*k*), from the date of such renewal, including the day of such date, and not afterwards.

The defendants may appear hereto by entering appearances, either personally or by solicitor,

[*If the writ is issued out of the London Office, say :*] at the Record and Writ Clerks' Office, Chancery Lane, London.

[*If the writ is issued out of a District Registry, and the defendants reside or carry on business within that district* (*l*), *say :*] at the District Registry at ——.

[*If the writ is issued out of a District Registry, and the defendants neither reside nor carry on business within that district* (*m*), *say :*] either at the District Registry at ——, or the Record and Writ Clerks' Office, Chancery Lane, London.

[*As to the indorsements which are required to be made or which may be made upon the writ of summons : see post,* pp. 100—118.]

212.

Other forms of title.

The title of the action is a collection of the names of the plaintiffs and of the defendants. Where the plaintiff sues on behalf of himself and others, or is under disability, it is usual to state that

(*h*) Every writ of summons must bear date on the day on which it is issued, and must be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor be vacant, in the name of the Lord Chief Justice of England ; R. S. C. Ord. II. 8.

(*i*) As to service of the writ of summons, see *post,* pp. 136—145.

(*k*) As to renewal of the writ of summons, see *post,* pp. 125, 126.

(*l*) See R. S. C. Ord. V. 3.

(*m*) See R. S. C. Ord. V. 2.

fact in the title of the writ of summons, and of the future proceedings in the action; as thus:—

Between John Lee, on behalf of himself and all other the creditors of A. B., deceased (*p*) . . . plaintiff.

Or,

John Lee, an infant, by C. D., his next friend, plaintiff.

Or,

Thomas Jones, committee of the estate of John Lee, a person of unsound mind, so found by inquisition, and the said John Lee, by the said Thomas Jones, as his committee . . plaintiffs (*q*).

Or,

John Lee, a person of unsound mind, not so found, by C. D., his next friend . . . . . plaintiff.

Or,

Jane Lee, wife of the defendant John Lee, by C. D., her next friend . . . . . plaintiff.

It is not usual to state in the title of the writ of summons that a defendant is under disability; but after a guardian *ad litem* of such defendant has been appointed, that fact should be stated in the title of all future proceedings; as thus:

James Styles, an infant, by Edward Styles, his guardian.

Or,

James Styles, a person of unsound mind, not so found, by Edward Styles, his guardian.

Or,

James Styles, and Amy the wife of the said James Styles, by Edward Styles, her guardian.

A person of unsound mind, so found, defending with his committee, may be described thus:

Edward Styles, committee of the estate of James Styles, a person of unsound mind, so found by inquisition, and the said James Styles, by the said Edward Styles, as his committee (*s*).

(*p*) *Worraker* v. *Pryor*, 2 Ch. D. 109; *Re Royle, Fryer* v. *Royle*, 5 Ch. D. 540; *Re Vincent*, 26 W. R. 94; overruling *Cooper* v. *Blisset*, 1 Ch. D. 691.

(*q*) See *Booth* v. *Coulton*, 3 Dec. 1866, Reg. Lib. A. 2706.

(*s*) See *Beckwith* v. *Booth*, 17 Nov. 1866, Reg. Lib. A. 2640.

213.

Writ of summons for service out of the jurisdiction, or whereof notice in lieu of service is to be given out of the jurisdiction (*e*).

187—. No. — (*f*).

In the High Court of Justice,
Chancery Division(*g*).
Master of the Rolls.
[*Or*, Vice-Chancellor Malins.
Or, Vice-Chancellor Bacon.
Or, Vice-Chancellor Hall (*h*).]
District Registry of —— (*j*).
In the matter of the estate of ——, deceased (*k*).
Between —— . . . Plaintiff,
and
—— . . . Defendant (*l*).

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To ——, of ——.

We command you that within —— (*m*) after the service of this

(*e*) See R. S. C. Ord. II. 3*a*, 5, and App. (A) Part I., No. 2. As to the preparation, &c., of Writs of Summons, see *ante* No. 210, note (*a*). No writ of summons for service out of the jurisdiction, or whereof notice is to be given out of the jurisdiction, may be issued without the leave of the Court or a Judge; R. S. C. Ord. II. 4. The following practice has been adopted by the Judges of the Chancery Division with respect to applications for leave to issue writs for service, or whereof notice is to be given, out of the jurisdiction. One application is to be made before the issuing of the writ, both for leave to issue it, and for leave to serve it, or to give notice of it, out of the jurisdiction. This application must be supported by the affidavit required by Ord. XI., rules 1*a* and 3; for form of affidavit, see *post* No. 290. No motion is to be made or summons issued; but the unsealed writ is to be left at the chambers of the Judge, with an office copy of the affidavit above mentioned. The order (if any) made upon the application is put upon the writ thus: "day of , 187 (*date*), Let this writ be issued with liberty to serve it (*or*, notice of it) on the defendant, at , in the (Kingdom) of . The time for the defendant to enter an appearance is to be (*insert the time*) after service." As to the time to be inserted, see below, note (*m*). A copy of this order must be put on the copy writ filed with the Record and Writ Clerk or district registrar. As to filing a copy of the Writ of Summons with the Record and Writ Clerk or district registrar, see *post*, p. 119, note (*a*). As to the service of Writs of Summons out of the jurisdiction, see *post*, p. 142, note (*n*).

(*f*) See *ante* No. 210, note (*e*).

(*g*) *Ibid.*, note (*b*).

(*h*) *Ibid.*, note (*c*).

(*j*) *Ibid.*, note (*d*).

(*k*) *Ibid.*, note (*f*).

(*l*) *Ibid.*, note (*g*).

(*m*) Here insert the time after service or notice within which an appearance is to be entered by the defendant. Every order giving leave to effect service of a writ out of the jurisdiction, or to give notice of a writ out of the jurisdiction, must limit a time after such service or notice within which the defendant is to enter an appearance, such time to depend on the place or country within

writ [*Or*, of notice of this writ (*n*)] on you, inclusive of the day of such service, you do cause an appearance to be entered for you

which the writ is to be served or the notice given; R. S. C. Ord. XI. 4. The following is a table of the times formerly inserted by the registrars in orders for the service out of the jurisdiction of a Bill in Chancery :—

Place or Country.	Time to Appear.		
	Calendar months	Weeks.	Days.
America, Central	—	10	—
America, North :			
British Possessions	2	—	—
United States, Eastern	2	—	—
" Western (on the Pacific)	6	—	—
America, South	—	10	—
States on the Pacific	5	—	—
Australasia	6	—	—
Austrian Empire	—	4	—
Belgium	—	—	14
Brazils	3	—	—
Channel Islands	—	—	10
China	6	—	—
Denmark	—	—	21
France	—	—	14
German States	—	—	21
Greece	—	6	—
Holland	—	—	14
India	5	—	—
Indian Archipelago	6	—	—
Ionian Islands	—	6	—
Ireland	—	—	10
Isle of Man	—	—	10
Italy	—	4	—
Madeira	—	4	—
Malta	—	4	—
Mexico	—	10	—
Norway	—	4	—
Persia	5	—	—
Portugal	—	—	21
Prussia	—	—	21
Russia in Europe	—	6	—
Scotland	—	—	10
Spain	—	—	21
Sweden	—	4	—
Switzerland	—	—	21
Turkey in Asia	3	—	—
Turkey in Europe	—	6	—
West Indies	—	10	—

(*n*) As to the cases in which the writ of summons should be served on a defendant out of the jurisdiction, and those in which notice of the writ should be given in lieu of service, see *post* No. 291, note (*q*).

in the Chancery Division of our High Court of Justice, in an action at the suit of —— ; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, One thousand eight hundred and —— (*o*).

N.B.—This writ is to be served (*p*) within twelve calendar months from the date thereof, or if renewed (*q*) from the date of such renewal, including the day of such date, and not afterwards.

The defendant may appear hereto by entering appearance, either personally or by solicitor, at the Record and Writ Clerk's Office, Chancery Lane, London, England (*r*) [*Or*, either at the District Registry at ——, in the county of ——, England, *Or*, at the Record and Writ Clerk's Office, Chancery Lane, London, England (*s*)].

[*As to the indorsements which are required to be made, or which may be made upon the writ of summons, see post* No. 246.]

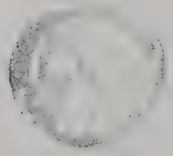
(*o*) See *ante* No. 210, note (*h*).

(*p*) *Ibid.*, note (*j*).

(*q*) *Ibid.*, note (*k*).

(*r*) This form is applicable where the writ is issued out of the London office.

(*s*) This form is applicable where the writ is issued out of a district registry ; R. S. C. Ord. V. 2.



Section II.—The Indorsements on the Writ.

Part I.—Indorsements on Ordinary Writs of Summons (*a*).

(*a*) The indorsements on an ordinary writ of summons are either compulsory, or optional. The compulsory indorsements are—(1). A statement of the nature of the claim made, or of the relief or remedy required, in the action; as to this, see R. S. C. Ord. II. 1.; *Ibid.*, Ord. III. 1, 2, 3; (2). A statement of the address of the plaintiff, of the name or firm, and place of business of the solicitor suing out the writ (if any), and of the solicitor for whom such solicitor is agent (if any), and of the address for service, as to which, see R. S. C. Ord. IV. and R. S. C. Feb. 1876, 2, 3; (3). If the plaintiff sues, or the defendant or any of the defendants are sued, in a representative capacity, a statement of the capacity in which the plaintiff or defendant sues or is sued; see R. S. C. Ord. III. 4; and (4). In actions where the plaintiff's claim is for a debt or liquidated demand only, a statement of the amount claimed for debt or in respect of such demand, and for costs respectively, and a further statement that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction, within the time allowed for appearance, further proceedings will be stayed, see Ord. III. 7. The optional indorsements are (1) a statement of the particulars of the amount sought to be recovered, after giving credit for any payment or set-off, which may only be made in actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust; see R. S. C. Ord. III. 6; and (2) in all cases of ordinary account, where the plaintiff in the first instance desires to have an account taken, an indorsement of a claim that such account be taken; see R. S. C. Ord. III. 8. Besides the above indorsements, which must be made before the issuing of the writ (R. S. C. Ord. III. 1; *Ibid.*, Ord. V. 7), the person serving a writ of summons must within three days at most after such service indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff will not be at liberty, in case of non-appearance, to proceed by default; R. S. C. Ord. IX. 13. As to amending the indorsement on a writ of summons, see R. S. C. Ord. III. 2; *Ibid.*, Ord. XVII. 9; *Ibid.*, Ord. XXVII. 11 (R. S. C. Feb. 1876, 6).

(1.) *An Indorsement of a Statement of the Nature of the Claim made or of the Relief or Remedy required in the Action* (*b*).

(*a*.) *In Actions assigned by the Supreme Court of Judicature Act, 1873* (*c*), *s.* 34, *to the Chancery Division* (*d*).

214. Claim by creditor to administer estate (*d d*).

The plaintiff's claim is on behalf of himself and all other the creditors of ——, of ——, deceased, to have the (real and) personal estate of the said —— administered. The defendant —— is sued as the executor [*Or*, as the administrator] of the said —— [and the defendants —— and ——, as his co-heirs-at-law; *Or*, as the devisees of his real estate].

215. Claim by legatee to administer estate.

The plaintiff's claim is as a legatee under the will dated the —— day of ——, 187—, of ——, deceased, to have the (real and) personal estate of the said —— administered. The defendant C. D. is sued as the executor [*Or*, as the administrator] of the said —— [and the defendants E. F. and G. H. as his devisees].

216. Partnership.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant under articles of partnership dated the —— day of ——, and to have the affairs of the partnership wound up.

217. Foreclosure or sale.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the —— day of —— made between ——, and that the mortgage may be enforced by foreclosure or sale.

218. Redemption.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated —— and made between ——, and to redeem the property comprised therein.

219. To raise portions.

The plaintiff's claim is that the sum of *l.*, which by an indenture of settlement dated —— and made between ——, was provided for the portions of the younger children of ——, may be raised.

220. To execute a trust.

The plaintiff's claim is to have the trusts of an indenture dated ——, and made between —— carried into execution.

(*b*) As to this indorsement, see R. S. C. Ord. II. 1; *Ibid.*, Ord. III. 1, 2, 3; and Appendix (A), Part 2, ss. 1, 2, 4, & 6. It is not essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled; R. S. C. Ord. III. 2. The indorsement may by leave of the Court or a Judge be amended so as to extend to any other cause of action, or any additional remedy or relief; R. S. C. Ord. III. 2; as to amending the indorsement of claim on the writ of summons, see further, *Ibid.*, Ord. XVII. 9; Ord. XXVII. 11 (R. S. C. Feb. 1876, rule 6).

(*c*) 36 & 37 Vict. c. 66.

(*d*) See R. S. C. Appendix (A), part 2, s. 1.

(*d d*) See *Worraker* v. *Pryor*, 2 Ch. D. 109; *Re Royle*, *Fryer* v. *Royle*, 5 Ch. D. 540; *Eyre* v. *Cox*, 24 W. R. 317; *Re Vincent*, 26 W. R. 94; *Cooper* v. *Blisset*, 1 Ch. D. 691, is overruled.

221. To cancel or rectify an instrument.

The plaintiff's claim is to have a deed dated ——, and made between ——, set aside or rectified.

222. Specific performance.

The plaintiff's claim is for specific performance of an agreement dated the —— day of ——, for the sale by the plaintiff to the defendant of certain hereditaments at ——.

(*b*.) *In Actions to recover a Debt or Liquidated Demand in Money where the Writ of Summons is not indorsed under R. S. C., Ord. III.*, 6 (*c*).

223.

Goods sold. The plaintiff's claim is *l.* for the price of goods sold (*f*).

Money lent. The plaintiff's claim is *l.* for money lent [and interest].

Several demands. The plaintiff's claim is *l.*, whereof *l.* is for the price of goods sold, and *l.* for money lent, and *l.* for interest (*g*).

Rent. The plaintiff's claim is *l.* for arrears of rent.

Salary, &c. The plaintiff's claim is *l.* for arrears of salary as (*g g*).

Interest. The plaintiff's claim is *l.* for interest upon money lent.

General average. The plaintiff's claim is *l.* for a general average contribution.

Freight, &c. The plaintiff's claim is *l.* for freight and demurrage.

The plaintiff's claim is *l.* for lighterage.

Tolls. The plaintiff's claim is *l.* for market tolls and stallage.

Penalties. The plaintiff's claim is *l.* for penalties under the Statute —— (*h*).

Banker's balance. The plaintiff's claim is *l.* for money deposited with the defendant as a banker.

Fees, &c., as solicitors. The plaintiff's claim is *l.* for fees for work done [and *l.* money expended] as a solicitor.

Commission. The plaintiff's claim is *l.* for commission earned as (*j*).

Medical attendance, &c. The plaintiff's claim is *l.* for medical attendances.

Return of premium. The plaintiff's claim is *l.* for a return of premiums paid upon policies of insurance.

(*c*) See R. S. C. Appendix (A), part 2, s. 2. Where the plaintiff's claim is for a debt or liquidated demand only, the writ of summons must be indorsed not only with a statement of the nature of the plaintiff's claim (see forms in text), but also with a statement of the amount claimed for debt and costs, and a further statement that upon payment thereof within four days after service further proceedings will be stayed; R. S. C. Ord. III. 7; for form, see *post* No. 225.

(*f*) This form will suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.

(*g*) As to the joinder of several causes of action, see R. S. C. Ord. XVII. and p. 118, note (*z*) *post*.

(*g g*) Here describe the capacity in which the plaintiff was employed; as "a clerk."

(*h*) Here specify the statute on which the action is brought.

(*j*) Here state the character in which the plaintiff was employed, as "auctioneer," "cotton broker," &c.

Warehouse rent. The plaintiff's claim is *l.* for the warehousing of goods.

Carriage of goods. The plaintiff's claim is *l.* for the carriage of goods by railway.

Use and occupation of houses. The plaintiff's claim is *l.* for the use and occupation of a house.

Hire of goods. The plaintiff's claim is *l.* for the hire of (*k*).

Work done. The plaintiff's claim is *l.* for work done as (*l*).

Board and lodging. The plaintiff's claim is *l.* for board and lodging.

Schooling. The plaintiff's claim is *l.* for the board, lodging, and tuition of *X. Y.*

Money received. The plaintiff's claim is *l.* for money received by the defendant as —— (*m*) of the plaintiff.

Fees of office. The plaintiff's claim is *l.* for fees received by the defendant under colour of the office of .

Money overpaid. The plaintiff's claim is *l.* for a return of money overcharged for the carriage of goods by railway.

The plaintiff's claim is *l.* for a return of fees overcharged by the defendant as (*n*).

Return of money by stakeholder. The plaintiff's claim is *l.* for a return of money deposited with the defendant as stakeholder.

Money won, from stakeholder. The plaintiff's claim is *l.* for money entrusted to the defendant as stakeholder, and become payable to plaintiff.

Money entrusted to agent. The plaintiff's claim is *l.* for a return of money entrusted to the defendant as agent of the plaintiff.

Money obtained by fraud. The plaintiff's claim is *l.* for a return of money obtained from the plaintiff by fraud.

Money paid by mistake. The plaintiff's claim is *l.* for a return of money paid to the defendant by mistake.

Money paid for consideration which has failed. The plaintiff's claim is *l.* for a return of money paid to the defendant for (*o*).

The plaintiff's claim is *l.* for a return of money paid as a deposit upon shares to be allotted.

Money paid by surety for defendant. The plaintiff's claim is *l.* for money paid for the defendant as his surety.

Rent paid. The plaintiff's claim is *l.* for money paid for rent due by the defendant.

Money paid on accommodation bill. The plaintiff's claim is *l.* upon a bill of exchange accepted [*Or*, indorsed] for the defendant's accommodation.

Contribution by surety. The plaintiff's claim is *l.* for a contribution in respect of money paid by the plaintiff as surety.

By co-debtor. The plaintiff's claim is *l.* for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.

(*k*) Here describe generally the goods, as "furniture."

(*l*) Here state the employment in which the plaintiff acted as "surveyor."

(*m*) Here state the character in which the defendant received the money, as "solicitor," "factor," "collector," &c.

(*n*) Here state generally the character in which the defendant made the overcharge.

(*o*) Here state generally the consideration and the failure of it, as "work to be done, left undone," or "a bill to be taken up, not taken up," &c.

The plaintiff's claim is *l.* for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff. — Money paid for calls.

The plaintiff's claim is *l.* for money payable under an award. — Money payable under award.

The plaintiff's claim is *l.* upon a policy of insurance upon the life of *X. Y.*, deceased. — Life policy.

The plaintiff's claim is *l.* upon a bond to secure payment of 1000*l.*, and interest. — Money bond.

The plaintiff's claim is *l.* upon a judgment of the —— Court, in the Empire of Russia. — Foreign judgment.

The plaintiff's claim is *l.* upon a cheque drawn by the defendant. — Bills of exchange, &c.

The plaintiff's claim is *l.* upon a bill of exchange accepted [*Or*, drawn; *Or*, indorsed] by the defendant.

The plaintiff's claim is *l.* upon a promissory note made [*Or*, indorsed] by the defendant.

The plaintiff's claim is *l.* against the defendant A. B. as acceptor, and against the defendant *C. D.* as drawer [*Or*, indorser] of a bill of exchange (*p*).

The plaintiff's claim is *l.* against the defendant as surety for (*q*). — Surety.

The plaintiff's claim is *l.* against the defendant *A. B.* as principal, and against the defendant *C. D.* as surety (*r*), for (*s*).

The plaintiff's claim is *l.* against the defendant as a *del credere* agent for (*t*). — *Del credere* agent.

The plaintiff's claim is *l.* for calls upon shares. — Calls.

The plaintiff's claim is *l.* for crops (*u*), left by the defendant as outgoing tenant of a farm. — Waygoing crops, &c.

The plaintiffs as seamen on board the vessel "Mary," claim *l.* for wages due to them, as follows: (1), the mate 30*l.* for two months' wages from the —— day of ——, &c. — Seamen's wages.

The plaintiffs claim *l.* for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the —— day of —— and the —— day of ——. — Necessaries supplied to a vessel.

(*p*) The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes; R. S. C. Ord. XVI. 5.

(*q*) Here state generally the consideration as "the price of goods sold to A. B.," "arrears of rent due from A. B.," "money lent to A. B.," "money received by A. B. as traveller for the plaintiff," &c.

(*r*) The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract; R. S. C. Ord. XIV. 5.

(*s*) Here state generally the consideration; see note (*q*), *supra*.

(*t*) Here state generally the consideration; as "the price of goods sold," &c.

(*u*) Or "tillage," or "manure," or as the case may be.

(c.) In Actions to recover Damages or Unliquidated Demands or to recover Property (a).

224.

Agent, &c.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as (*b*).

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as —— (*b*) (and *l.* for arrears of wages).

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as —— (*b*).

The plaintiff's claim is for damages for breach of duty as —— (*b*) of the plaintiff [and *l.* for money received as such].

Apprentices.

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of *X. Y.* to the defendant (*c*).

Arbitration.

The plaintiff's claim is for damages for non-compliance with the award of *X. Y.*

Assault, &c.

The plaintiff's claim is for damages for assault [and for false imprisonment] [and for malicious prosecution] (*d*).

By husband and wife.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff *C. D.* (*g*).

Against husband and wife.

The plaintiff's claim is for damages for assault by the defendant *C. D.* (*g*).

Solicitor.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff.

Bailment.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].

Pledge.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].

Hire.

The plaintiff's claim is for damages for negligence in the custody of —— (*h*) lent on hire [and for wrongfully detaining the same].

Banker.

The plaintiff's claim is for damages for wrongfully neglecting [*or*, refusing] to pay the plaintiff's cheque.

Bill.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

Bond.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a (*j*).

(*a*) See R. S. C. App. (A), part 2, s. 4.

(*b*) Here state the character of the employment, as thus: "traveller," "manager," "factor."

(*c*) Or "plaintiff," as the case may be.

(*d*) As to the joinder of several causes of action, see R. S. C. Ord. XVII., and *post*, p. 118, note (*z*).

(*g*) Claims by or against husband and wife may be joined with claims by or against either of them separately; R. S. C. Ord. XVII. 4.

(*h*) Here shortly describe the goods, as "furniture," or "a carriage."

(*j*) Here fill in the trade in question.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship —— (*k*). Charter-party.

The plaintiff's claim is for return of —— (*l*), or their value, and for damages for detaining the same. Claim for return of goods; damages.

The plaintiff's claim is for wrongfully depriving plaintiff of (*l*). Damages for depriving of goods.

The plaintiff's claim is for damages for libel. Defamation.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained. Distress. Replevin.

The plaintiff's claim is for damages for improperly distraining (*n*). Wrongful distress.

The plaintiff's claim is to recover possession of (*o*). Ejectment.

The plaintiff's claim is to establish his title to —— (*p*), and to recover the rents thereof (*q*). To establish title and recover rents.

The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing. Fishery.

The plaintiff's claim is for damages for fraudulent misrepresentation (*r*). Fraud.

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A. B.*

The plaintiff's claim is for damages for breach of a contract of guarantee for *A. B.* Guarantee.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

(*k*) Here fill in the name of the ship.

(*l*) Here shortly describe the goods, as "furniture," &c.

(*n*) This form will be sufficient whether the distress complained of were wrongful, or excessive, or irregular, and whether the claim be for damages only or for double value.

(*o*) Here describe shortly the premises in question, as "a house, No. , in Street, ," or "a farm called Blackacre, situate in the parish of , in the county of ." With this claim may be joined claims in respect of mesne profits or arrears of rent in respect of the premises claimed or any part thereof, and for damages for breach of any contract under which the same, or any part thereof, are held; R. S. C. Ord. XVII. 2.

(*p*) Here shortly describe the premises, as in last note (*o*).

(*q*) As to what claims may be joined in this action, see above note (*o*), and R. S. C. Ord. XVII. 2.

(*r*) Here state generally the occasion on which the misrepresentation was made, as "on the sale of a horse," or "of a business," or "of shares," &c.

Insurance.

The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight [*Or*, cargo (*s*)].

The plaintiff's claim is for return of premiums under a policy upon the ship "Royal Charter," and freight [*Or*, cargo].

Fire insurance.

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house (*t*).

Landlord and tenant.

The plaintiff's claim is for damages for breach of contract to keep a house in repair (*t*).

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm (*t*).

Medical man.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

Mischievous animal.

The plaintiff's claim is for damages for injury by the defendant's dog.

Negligence.

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for injury to the plaintiff C. D. by the negligent driving of the defendant or his servants (*u*).

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

Lord Campbell's Act (9 & 10 Vict. c. 93).

The plaintiff's claim is as executor of A. B. deceased, for damages for the death of the said A. B., from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

Promise of marriage.

The plaintiff's claim is for damages for the breach of a promise of marriage.

Seduction.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

Sale of goods.

The plaintiff's claim is for damages for breach of a contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery of cotton (*v*).

The plaintiff's claim is for damages for breach of warranty of a horse.

Sale of land.

The plaintiff's claim is for damages for breach of a contract to sell [*Or*, purchase] land.

(*s*) This form will be sufficient whether the loss claimed be total or partial.

(*t*) This claim may be joined with a claim for the recovery of the property held under the contract; R. S. C. Ord. XVII. 2.

(*u*) This claim may be joined with a claim by the husband separately; R. S. C. Ord. XVII. 4.

(*v*) Or "for short delivery of cotton," or "for defective quality of cotton; or specify in a similar manner some other breach of a contract of sale.

The plaintiff's claim is for damages for breach of a contract to let [*Or*, take] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*Or*, purchase] the lease, with goodwill, fixtures, and stock in trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title (*w*) in a conveyance of land.

Trespass to land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*Or*, cutting his grass; *Or*, pulling down his timber; *Or*, pulling down his fences; *Or*, removing his gate; *Or*, using his road or path; *Or*, crossing his field; *Or*, depositing sand there; *Or*, carrying away gravel from thence; *Or*, carrying away stones from his river].

Support.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*Or*, house; *Or*, mine].

Way.

The plaintiff's claim is for damages for wrongfully obstructing a public highway [*Or*, a private way].

Watercourse, &c.

The plaintiff's claim is for damages for wrongfully diverting [*Or*, obstructing; *Or*, polluting; *Or*, diverting water from] a watercourse.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*Or*, into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture (*x*).

Light.

The plaintiff's claim is for damages for obstructing the access of light to the plaintiff's house.

Sporting.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting.

Patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Copyright

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

Trade mark.

The plaintiff's claim is for damages for wrongfully using [*Or*, imitating] the plaintiff's trade mark.

Work.

The plaintiff's claim is for damages for breach of a contract to build a ship (*z*).

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship (*z*).

Nuisance

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory (*a*).

The plaintiff's claim is for damages from nuisance by noise from the defendant's works (*b*).

(*w*) Or "for quiet enjoyment," &c.

(*x*) This form will be sufficient whatever may be the nature of the right to pasture.

(*z*) A "to repair a house," &c.

(*a*) Or as may be.

(*b*) Or "stables," or as may be.

Innkeeper.

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

Mandamus.

[*Same as* No. 1630*a post*].

Injunction.

[*Same as* No. 1608*a post*].

Receiver.

[*Same as* No. 1657*a post*].

[*Add to Indorsement where claim is to land, or to establish title, or both* (*f*)].

Mesne profits.

And for mesne profits.

Arrears of rent.

And for an account of rents or arrears of rent.

Breach of Covenant.

And for breach of covenant for repairs (*g*).

Damage to vessel by collision.

The plaintiffs as owners of the vessel "Mary," of the port of ——, claim 1,000*l.* against the brig or vessel "Jane" for damage occasioned by a collision, which took place in the North Sea in the month of May last.

Damage to cargo by collision.

The plaintiffs as owners of the cargo laden on board the vessel "Mary," of the port of ——, claim *l.* against the vessel "Jane," for damage done to the said cargo in a collision in the North Sea in the month of May last.

Damage to cargo otherwise than by collision.

The plaintiff as owner of goods laden on board the vessel "Mary," on a voyage from Lisbon to England, claims from the owner of the said vessel *l.* for damage done to the said goods during such voyage.

(*f*) See R. S. C. Ord. XVII. 2.
(*g*) Or as may be.

(2.) *An Indorsement of the Amount claimed for Debt and Costs (a).*

The plaintiff's claim is £—— (*b*), and £—— for costs (*c*); and if the amount claimed be paid to the plaintiff or his solicitor within four days (*d*), 225.

[*If the writ is not for service within the jurisdiction, say:*] within —— (*e*),

from the service hereof, further proceedings will be stayed.

(3.) *An Indorsement of the Address of the Person issuing the Writ (f).* 226.

This writ was issued by —— (*g*), of ——, in the —— of —— (*h*), whose address for service is at ——, in the —— of —— (*j*), agent for ——, of ——, in the —— of —— (*k*), solicitor for the plaintiff, whose address is at —— (*l*). Indorsement of address, &c., where writ issued by solicitor.

(*a*) Whenever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, must state the amount claimed for debt or in respect of such demand, and for costs respectively, and must further state that upon payment thereof within four days after service, or, in case of a writ not for service within the jurisdiction, within the time allowed for appearance further proceedings will be stayed; R. S. C. Ord. III. 7.

(*b*) Here describe the nature of the plaintiff's claim; see *ante* No. 223, pp. 103—105.

(*c*) The defendant may, notwithstanding that he has paid the debt and costs, have the costs taxed, and if more than one-sixth be disallowed, the plaintiff's solicitor must pay the costs of taxation; R. S. C. Ord. III. 7.

(*d*) This form is applicable where the writ is for service within the jurisdiction; R. S. C. Ord. III. 7.

(*e*) Where the writ is not for service within the jurisdiction, the time inserted must be the time limited for appearance by the order giving leave to effect service out of the jurisdiction; R. S. C. Ord. III. 7.

(*f*) R. S. C. Ord. IV. and R. S. C. Feb. 1876, rules 2, 3.

(*g*) Name or firm of plaintiff's solicitor; R. S. C. Ord. IV. 1, 3*a*.

(*h*) Place of business of plaintiff's solicitor; R. S. C. Ord. IV. 1, 3*a*.

(*j*) If the writ is issued out of the London office, and the place of business of the solicitor suing out the same is more than three miles from Temple Bar, he must endorse upon the writ another proper place to be called his address for service, which must not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications, may be left for him; R. S. C. Ord. IV. 1. If the writ is issued out of a district registry, and the place of business of the solicitor suing out the same is not within the district, he must add an address for service within the district, and if the defendant neither resides nor carries on business within the district, he must add a further address for service not more than three miles from Temple Bar; R. S. C. Ord. IV. 3*a*; R. S. C. Feb. 1876, rule 3.

(*k*) If the solicitor suing out the writ is only agent of another solicitor, he must add the name or firm, and place of business of the principal solicitor; R. S. C. Ord. IV. 1, 3*a*.

(*l*) The address of the plaintiff must be endorsed on the writ; R. S. C.

227.

Indorsement of address, &c., where writ issued by plaintiff in person.

This writ was issued by the plaintiff in person, who resides at —— (*m*), and is a —— (*n*), and whose address for service is at —— (*o*),

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Ord. IV. 1, 3*a*. As to obtaining further information as to the names and places of residence of the plaintiffs when the writ is sued out by partners in the name of their firm, see R. S. C. Ord. VII. 2; *Ibid.*, Ord. XVI. 10; and *ante*, pp. 86, 87.

(*m*) Here mention the city, town, or parish, and also the name of the street, and number of the house of the plaintiff's residence; R. S. C. Ord. IV. 2, 3*a*.

(*n*) Here mention the plaintiff's occupation; R. S. C. Ord. IV. 2, 3*a*.

(*o*) If the writ is issued out of the London office, and the place of residence of the plaintiff is more than three miles from Temple Bar, there must be endorsed upon the writ another proper place to be called his address for service, which must be not more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings and written communications, may be left for him; R. S. C. Ord. IV. 2. If the writ is issued out of a district registry, and the place of residence of the plaintiff is not within the district, he must add an address for service within the district, and if the defendant neither resides nor carries on business within the district, the plaintiff must add a further address for service not more than three miles from Temple Bar; R. S. C. Ord. IV. 3*a* (R. S. C. Feb. 1876, 3).

227a.
Notice of change of place of business or residence, or of address for service (*p*).

(*Short title, and reference to the record.*)

Take notice that my place of business
Or, place of residence ; *Or*, address for service
is now at —— (*q*), instead of at —— (*q*).
Dated this —— day of ——, 187—.
A. B., solicitor [*Or*, agent] for the plaintiff, *&c.*—*Or*,
A. B., the plaintiff, *&c.*, in person.
To the Clerk of Records and Writs ; and
To Mr. C. D., solicitor [*Or*, agent] for the defendant E. F. [*or as may be*].

(4.) *An Indorsement of the Character in which the Parties Sue or are Sued* (*s*).

228.
Executors (*t*)

The plaintiff's claim is as executor [*Or*, administrator] of C. D., deceased, for *&c.*

The plaintiff's claim is against the defendant A. B., as executor [*Or*, administrator] of C. D., deceased, for *&c.*

The plaintiff's claim is against the defendant A. B., as executor of X. Y., deceased, and against the defendant C. D., in his personal capacity, for *&c.*

229.
By husband and wife executrix.

The claim of the plaintiff C. D. is as executrix of X. Y., deceased, and the claim of the plaintiff A. B. as her husband, for *&c.*

230.
Against husband and wife executrix.

The claim of the plaintiff is against the defendant C. B., as executrix of X. Y. deceased, and against the defendant A. B., as her husband, for *&c.*

(*p*) See Dan. Pr., 380, note (*c*).

(*q*) State where.

(*s*) If the plaintiff sues, or the defendant or any of the defendants are sued, in a representative capacity, there must be an indorsement on the writ showing in what capacity the plaintiff or defendant sues or is sued ; R. S. C. Ord. III. 4 ; and App. (A), part 2, s. 8.

(*t*) Executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are representatives, without

231.

Trustee in bankruptcy (*u*).

The plaintiff's claim is as trustee under the bankruptcy of A. B., for ——.

The plaintiff's claim is against the defendant as trustee under the bankruptcy of A. B., for ——.

232.

Trustees (*v*).

The plaintiff's claim is as [*Or*, The plaintiff's claim is against the defendant as] trustee under the will of A. B. [*Or*, under the settlement upon the marriage of A. B. and X. Y., his wife] for *&c.*

233.

Public officer.

The plaintiff's claim is as public officer of the —— Bank, for ——.

The plaintiff's claim is against the defendant as public officer of the —— Bank, for ——.

The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as public officer of the —— Bank, as surety (*w*), for ——.

joining any of the parties beneficially interested in the estate, and will be considered as representing such parties in the action; but the Court or a judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto; R. S. C. Ord. XVI. 7. As to the joinder of claims by or against an executor or administrator as such, with claims by or against him personally, see R. S. C. Ord. XVII. 5.

(*u*) Claims by a trustee in bankruptcy as such may not, unless by leave of the Court or a judge, be joined with any claim by him in any other capacity; R. S. C. Ord. XVII. 3.

(*v*) Trustees may sue and be sued on behalf of or as representing the property or estate of which they are trustees, without joining any of the parties beneficially interested in the trust, and will be considered as representing such parties in the action; but the Court or a judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto; R. S. C. Ord. XVI. 7; *Ibid.*, Ord. XVI. 11; 15 & 16 Vict. c. 86, s. 42, rule 9; *Stace* v. *Gage*, W. N. (1878) 101.

(*w*) See R. S. C. Ord. XVI. 5.

234. Heir and devisee.

The plaintiff's claim is against the defendant as heir-at-law of A. B., deceased.

The plaintiff's claim is against the defendant C. D. as heir-at-law, and against the defendant E. F. as devisee of lands under the will of A. B.

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235. Qui tam action.

The plaintiff's claim is as well for the Queen as for himself, for ——.

(5.) *A Special Indorsement of the Particulars of the Amount sought to be recovered where the Action is for a Debt or Liquidated Demand in money only (a).*

236. In an action for the price of goods sold.

The plaintiff's claim is for the price of goods sold. The following are the particulars :—

	£	s.	d.
1873—31st December.—			
Balance of account for butcher's meat to this date . . .	35	10	0
1874—1st January to 31st March.—			
Butcher's meat supplied . .	74	5	0
	109	15	0
1874—1st February.—Paid . .	45	0	0
Balance due . .	£64	15	0

(*a*) The use of this indorsement is optional. It may be used in all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust; R. S. C. Ord. III. 6. The indorsement should state the full particulars of the amount sought to be recovered with dates and items; it is not enough to mention merely the total amount due; *Walker* v. *Hicks*, 3 Q. B. D. 8; *Parpaite* v. *Dickenson*, 26 W. R. 479. The advantage of using the indorsement is twofold: in the event of the non-appearance of the defendant to a writ so indorsed, the plaintiff may immediately sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs; R. S. C. Ord. XIII. 3, 4; and even where the defendant does appear to a writ so indorsed, the Court or Judge may, upon the application of the plaintiff, make an order empowering the plaintiff to sign final judgment for the amount indorsed, together with interest, if any, and costs, unless the defendant satisfy the Court or judge that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend; R. S. C. Ord. XIV. 1 (R. S. C. May, 1877, rule 3).

237.

The like (*c*).

The plaintiff's claim is against the defendant A. B. as principal and against the defendant C. D. as surety, for the price of goods sold to A. B. (*b*). The following are the particulars :—

1874—2nd February. Guarantee by C. D. of the price of woollen goods, to be supplied to A. B.

	£	*s.*	*d.*
2nd February—To goods . . .	47	15	0
3rd March—To goods	105	14	0
17th March—To goods . . .	14	12	0
5th April—To goods	34	0	0
	£202	1	0

238.

In an action on a promissory note (*d*).

The plaintiff's claim is against the defendant as maker of a promissory note. The following are the particulars :—

Promissory note for £250, dated 1st January, 1874, made by defendant, payable four months after date.

Principal	£250
Interest	

239.

In an action on a bill of exchange (*d*).

The plaintiff's claim is against the defendant A. B. as acceptor, and against the defendant C. D., as drawer, of a bill of exchange (*b*). The following are the particulars :—

Bill of exchange for £500, dated 1st January, 1874, drawn by defendant C. D. upon and accepted by defendant A. B., payable three months after date.

Principal	£500
Interest	

240.

In an action on a bond.

The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars :—

Bond dated 1st January, 1873. Condition for payment of £100 on the 26th December, 1873.

Principal due	£50
Interest	

(*b*) See R. S. C. Ord. XVI. 5.
(*c*) See *Parpaite* v. *Dickenson*, 26 W. R. 479.
(*d*) See *Walker* v. *Hicks*, 3 Q. B. D. 8.

241.

The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars :— In an action on a covenant.

Deed dated —— covenant to pay £100 and interest.

Principal due £80
Interest . . . . . .

(6.) *An Indorsement of a Claim for an Account under R. S. C., Ord. III.*, 8 (*e*).

242.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and the defendant [under Articles of Partnership, dated the —— day of ——]. Claim to have partnership account taken.

243.

The plaintiff's claim is to take the accounts of the defendant as executor [*Or*, administrator] of ——, deceased. Claim to executorship accounts taken.

244.

The plaintiff's claim is to take the account of the defendant as trustee under the will of —— [*Or*, under a deed dated the —— day of ——]. Claim to have trust account taken.

245.

The plaintiff's claim is to have an account taken of what is due on a mortgage dated ——. Claim to have mortgage account taken.

(*e*) The use of this indorsement is optional. It may be made in all cases of ordinary account, where the plaintiff in the first instance desires to have an account taken ; R. S. C. Ord. III. 8. The advantage of using it is that in default of appearance by the defendant to a summons so indorsed, and even after appearance unless the defendant satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions formerly usual in the Court of Chancery in similar cases, will be forthwith made upon the application of the plaintiff ; R. S. C. Ord. XV.

PART II.—INDORSEMENTS ON WRITS OF SUMMONS ISSUED FOR SERVICE OUT OF THE JURISDICTION, OR WHEREOF NOTICE IS TO BE GIVEN OUT OF THE JURISDICTION.

246. Indorsements on writ for service out of the jurisdiction, or whereof notice in lieu of service is to be given out of the jurisdiction.

[*The same indorsements are required to be made, or may be made, on a writ of summons for service out of the jurisdiction, or whereof notice in lieu of service is to be given out of the jurisdiction, as on an ordinary writ of summons, as to which, see ante*, pp. 101—117.

And in addition the following indorsement must be made on the writ:]

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction.

SECTION III.—THE JOINDER OF SEVERAL CAUSES OF ACTION (*z*).

247. Motion paper for leave to join other claims with claim for recovery of land.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the Supreme Court of Judicature Acts, 1873 & 1875.
And in the matter of an intended action between A. B. plaintiff, and C. D. defendant.

To move on behalf of the plaintiff for leave to join with a claim for the recovery of land, a claim for [*Here describe the nature of the claim which it is desired to join in the action*].

(*z*) As to the joinder of several causes of action, see R. S. C. Ord. XVII. The general rule is that the plaintiff may unite in the same action several causes of action; *Ibid.*, Ord. XVII. 1; whether such causes of action are cumulative or in the alternative; *Bagot* v. *Easton*, 7 Ch. D. 1; but see *Evans* v. *Buck*, 4 Ch. D. 432; claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant *Ibid.*, Ord. XVII. 6; claims by or against husband and wife may be joined with claims by or against either of them separately; *Ibid.*, Ord. XVII. 4; and claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator; *Ibid.*, Ord. XVII. 5. But no cause of action may, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same, or any part thereof, is held; R. S. C. Ord. XVII. 2; nor may claims by a trustee in bankruptcy as such, unless by leave of the Court or a

SECTION IV.—ISSUING THE WRIT (*a*).

248.
Præcipe on issuing writ of summons.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

Seal writ of summons in this action.
Dated the —— day of ——, 187—.
[*Name and address of solicitor or party issuing the writ; see ante* No. 92.]

Judge, be joined with any claim by him in any other capacity; *Ibid.*, Ord. XVII. 3. The power of the plaintiff to unite several causes of action in one action is subject to the power of the Court or a Judge, upon the application of any defendant alleging that the causes of action cannot be conveniently disposed of in one action, to confine the action to such of the causes of action as may be conveniently disposed of in one proceeding, and to exclude the rest; R. S. C. Ord. XVII. 7, 8, 9; or if it appear to the Court or Judge that the causes of action which are joined cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof; R. S. C. Ord. XVII. 1. With respect to rule 2, as to the joinder of other claims with a claim for the recovery of the land, it has been decided that an action "to establish title to land" is an action "for the recovery of land" within that rule; *Whetstone* v. *Dewis*, 1 Ch. D. 99; but that a foreclosure action is not an action "for the recovery of land;" *Tawell* v. *Slate Co.*, 3 Ch. D. 629. Leave will be given to join with a claim for the recovery of land, a claim for the recovery or delivery up and cancellation of a deed relating thereto; *Cook* v. *Enchmarch*, 2 Ch. D. 111; a claim for the recovery of personal estate, where both the real and the personal estate are comprised in the same instrument; *Whetstone* v. *Dewis*, 1 Ch. D. 99; *Cook* v. *Enchmarch*, 2 Ch. D. 111; a claim for the administration of personal estate, where the plaintiff claims as heir at law and one of the next of kin, *Kitching* v. *Kitching*, W. N. (1876) 225; 24 W. R. 901; a claim for an injunction to restrain the defendant from receiving rent, and for a receiver; *Cook* v. *Enchmarch*, 2 Ch. D. 111; *Allen* v. *Kennet*, 24 W. R. 845; and a claim for an order on the defendant to execute a conveyance of the same and other property; *Manisty* v. *Kenealy*, 24 W. R. 919.

(*a*) The writ of summons may be issued out of the London office, or out of the registry of any district; R. S. C. Ord. V. 1; *Oger* v. *Bradnum*, 1 C. P. D. 334. The writ is deemed to be issued on being sealed by the proper officer; R. S. C. Ord. V. 6; the proper officer is, if the writ is issued out of the London office, the Clerk of Records and Writs; if it is issued out of a district registry, the district registrar. The fee payable on sealing the writ

Section V.—Documents which must be Filed on Issuing the Writ (*b*).

249.

Authority by next friend of plaintiff to institute action (*c*).

[*Same as ante* No. 46 *and* No. 47 *in the case of an infant*: No. 100 *in the case of a lunatic*; No. 123 *in the case of a person of unsound mind*; *and* No. 169 *in the case of a married woman*.]

250.

Authority by the relator in an action to use his name (*d*).

I, A. B., of [*residence and addition*], authorise Mr. C. D., of [*Place of business*], to use my name as relator in the writ of summons about to be issued out of the High Court of Justice, Chancery Division, for the purpose of [*State, succinctly, what*]; and to prosecute the action to be commenced thereby. Dated, *&c.*

A. B.

is 5*s.* on the lower scale, and 10*s.* on the higher scale; Ord. as to Court Fees, 28 Octr., 1875, Sched.; Wilson, 506. It must be paid by a stamp either impressed or adhesive; Ord. as to Fees, 22 April, 1876, Sched.; Wilson, 522. As to what proceedings are on the lower and what on the higher scale, see R. S. C. (Costs) Ord. VI. On presenting any writ of summons for sealing, the plaintiff or his solicitor must leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the same description as that on which writs of summons are required to be written or printed, of such writ and of all the indorsements thereon, which copy must be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person; R. S. C. Ord. V. 7. The copy is filed by the officer receiving the same, and an entry of the filing thereof made in a book kept by him called the cause book; *Ibid.*, Ord. V. 8; the notice of the assignment of the action to a division of the Court required by the S. C. J. Act, 1875 (38 & 39 Vict. c. 77), s. 11, and by the R. S. C. Ord. V. 4, is sufficiently given by leaving a copy of the writ of summons with the officer sealing the writ; R. S. C. Ord. V. 9. In case of a writ for service, or whereof notice is to be given in lieu of service out of the jurisdiction, the leave of the Court or Judge must be obtained before issuing it; see *ante* No. 213, note (*e*).

(*b*) As to filing a copy of the writ, see last note (*a*).

(*c*) As to suing by a next friend, see R. S. C. Ord. XVI. 8; Ord. XVIII.; and see Dan. Pr. 67 (infant plaintiff); *Ibid.*, 80, 81 (lunatic plaintiff); *Ibid.*, 83 (plaintiff of unsound mind not so found); *Ibid.*, 103 (married woman plaintiff). The authority of the next friend must be filed when the writ is issued: 15 & 16 Vict. c. 86, s. 11.

(*d*) See Dan. Pr. 15. As to relators and the authority to use their names, see *Ibid.*, 13 *et seq.*, 260. The authority is required to be filed by 15 & 16 Vict. c. 86, s. 11.

251.
The like: by indorsement (*d*).

I, the within named A. B., authorise Mr. C. D., of [*Place of business*], to use my name as relator in the within writ of summons about to be issued; and to prosecute the action to be commenced thereby. Dated, *&c.*

A. B.

252.
Affidavit by sole plaintiff in interpleader action, of no collusion (*e*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title as in* No. 210 *ante.*]

I, ——, of [*residence and addition*], the above named plaintiff, make oath and say, that the writ of summons in this action now produced and shown to me, and marked A (*h*), is not issued in collusion with the above named defendants, or any or either of them but merely of my own accord for relief in this honourable Court.

Sworn [*&c., see post,* No. 696].

253.
Affidavit by several plaintiffs, of no collusion.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title as in* No. 210 *ante.*]

We, A. B., of [*residence and addition*], C. D., of, *&c.*, and E. F., of, *&c.*, the above named plaintiffs, each speaking positively for himself, and to the best of his knowledge, information, and belief as to other persons, severally make oath and say, as follows:

1. The writ of summons produced and shown to us respectively at the time of swearing this affidavit, and marked A. (*h*), is not issued in collusion by us, or any or either of us, with the above named defendants, or any or either of them but merely of our own accord, for relief in this honourable Court.

Sworn [*&c., see post* No. 696].

(*d*) See note (*d*) to No. 250 *ante.*

(*e*) As to interpleader actions, see Dan. Pr. 1412—1418. A copy of the affidavit sealed at the office out of which the writ is issued (but not necessarily an office copy), should be annexed to each copy of the writ for service; Dan. Pr. 322, 367, 1414. As to the costs of an interpleader action, see *Ibid.*, 1417, 1418.

(*h*) For form of memorandum of exhibit to be placed on the writ, see *post* No. 723.

254.

Affidavit by one of several plaintiffs, of no collusion (*m*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title as in* No. 210 *ante.*]

I, A. B., of [*residence and addition*], one of the plaintiffs named in the writ of summons in this action now produced and shown to me, and marked A. (*o*), make oath and say, as follows:

I alone of the plaintiffs have attended to the subject-matter of the dispute in this action, and my co-plaintiffs are not acquainted with the facts; and I say that the said writ of summons is not issued in collusion by myself, or any of the plaintiffs therein named, with any of the defendants in the said writ of summons named; but merely of the plaintiffs' own accord, for relief in this honourable Court.

Sworn [*&c., see post* No. 696].

255.

The like by a public officer so suing (*q*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title as in* No. 210 *ante.*]

I, ——, of [*residence and addition*], one of the duly registered public officers of the —— company, the above-named plaintiffs, make oath and say as follows:

The writ of summons in this action now produced and shown to me, and marked A., (*o*) is not issued in collusion by me with the above-named defendants, or any of them, nor, to the best of my knowledge, information, and belief, in collusion by, or by any other person or persons on behalf of, the said —— company, with the said defendants or any of them; but merely of my own accord, as the public officer of the said company, for relief in this honourable Court.

Sworn [*&c., see post* No. 696].

256.

Affidavit by the plaintiff's solicitor, of no collusion (*u*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title as in* No. 210 *ante.*]

I, A. B., of [*Place of business*], gentleman, the solicitor in this

(*m*) This is an adaptation to the new practice of the form used in *Gibbs* v. *Gibbs*, 5 W. R. 243; Dan. Pr. 322, 1414.

(*o*) See *post* No. 723.

(*q*) See Dan. Pr. 1414.

(*u*) See Dan. Pr. 322, note (*t*), 1414.

cause for the above-named plaintiff, make oath and say as follows:

1. [*Show why the affidavit is not made by the plaintiff; as thus:*] The above-named plaintiff is resident at ——, out of the jurisdiction of this honourable Court.

2. The writ of summons in this action now produced and shown to me, and marked A. (*w*), is not issued in collusion by me with the above-named defendants, or any of them, nor, to the best of my knowledge, information, and belief, in collusion by the above-named plaintiff, or by any person or persons on his behalf, with the said defendants, or any of them; but merely of the plaintiff's own accord, for relief in this honourable Court.

3. [*Show means of knowledge.*]

Sworn [*&c.: see post* No. 696].

257. Affidavit in action to perpetuate testimony (*x*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title as in* No. 210 *ante.*]

I, ——, of [*residence and addition*], make oath and say, as follows:

1. The action to be commenced by the writ of summons now produced and shown to me, and marked A. (*a*), is instituted for [*Here state briefly the object of the action, showing that the facts to which the testimony of the witnesses proposed to be examined is conceived to relate cannot be immediately investigated*].

2. [*Here state the circumstances by reason whereof the evidence intended to be perpetuated is in danger of being lost before the facts to which it relates can be adjudicated upon: as the old age or sickness of the witness, or his departure from the realm.*]

(*w*) See *post* No. 723.

(*x*) As to actions to perpetuate testimony, see Dan. Pr. 1419—1422; 5 & 6 Vict. c. 69.

(*a*) For form of memorandum of exhibit to be placed on the writ, see *pos* No. 723.

Section VI.—Issuing Concurrent Writs (*b*).

258.

Præcipe for concurrent writ of summons (*c*).

187—. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between —— . . . Plaintiff,
and
—— . . . Defendant.
Seal concurrent writ of summons in this action.
Dated —— day of ——, 187—.
[*Name, &c., of solicitor or party issuing writ; see ante* No. 21.]

259.

Motion paper for leave to issue writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction, as a concurrent writ with one for service within the jurisdiction (*a*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff, that he may be at liberty to issue a concurrent writ of summons in this action, and to serve such writ of summons upon [*Or*, to give notice of such writ of summons in lieu of service thereof to] the defendant [*Or*, the defendant A. B.], at —— or elsewhere, in the (kingdom) of ——; and that the time limited for the said defendant to appear to the

(*b*) The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear *teste* of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; which seal will be impressed upon the writ by the proper officer; such concurrent writ or writs will only be in force for the period during which the original writ in such action is in force; R. S. C. Ord. VI. 1; but it may, by leave of the Judge or district registrar, be renewed; R. S. C. Ord. VIII. 1; and *post*, pp. 125, 126. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction; R. S. C. Ord. VI. 2; *Beddington* v. *Beddington*, 1 P. D. 426.

(*c*) Upon suing out a concurrent writ, a fee of 2*s.* 6*d.* is payable, whether the action be on the higher or lower scale; Ord. as to Court Fees, 28 Octr., 1875, Sched.; Wilson, 506. The fee is payable by a stamp either impressed or adhesive; Ord. as to Fees, 22 April, 1876, Sched.; Wilson, 522.

(*d*) See R. S. C. Ord. VI. 2; and *Beddington* v. *Beddington*, 1 P. D. 426. For form of writ for service, or whereof notice is to be given in lieu of service, out of the jurisdiction, see *ante*, No. 213. For form of affidavit in support of application for leave to serve or give notice of the writ out of the jurisdiction, see *post* No. 290.

said writ of summons may be —— days (*e*) after service of the said writ upon [*Or*, after notice of the said writ to] the said defendant.

An affidavit in support accompanies.

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260. Summons for like (*d*).

Formal parts: see post No. 881.
on behalf of the plaintiff, that [*Continue as in last Form to end*].

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261. Affidavit in support.

[*See Form* No. 290 *post.*]

Section VII.—The Renewal of the Writ (*f*).

(*e*) See note (*m*) to No. 213 *ante.*

(*d*) See note (*d*) to No. 259 *ante.*

(*f*) No original writ of summons will be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a Judge, or the district registrar, for leave to renew the writ; and the Judge or Registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ; and the writ will in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer. A writ of summons so renewed will remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons; R. S. C. Ord. VIII. 1. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, will be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes; R. S. C. Ord. VIII. 2. The twelve months within which the application to renew the writ may be made, may be enlarged by the Judge, notwithstanding the expiration of the time; *Re Jones, Eyre* v. *Cox*, 25 W. R. 303; but this will not be done where the right of action is barred by the Statutes of Limitation; *Doyle* v. *Kaufman*, 3 Q. B. D. 7. The writ cannot be renewed when the original has been lost; *Davies* v. *Garland*, 1 Q. B. D. 250. The issuing of the writ of summons only saves the Statutes of Limitation so far as regards the particular action commenced thereby; *Manby* v. *Manby*, 3 Ch. D. 101. Under the old practice at common law, whereby writs of summons remained in force for six months only, a defendant who had been served with a writ, not renewed, after the expiration of the six months, could not treat the writ as a nullity; the proper course was to apply to set aside the writ and service thereof; *Hemp* v. *Warren*, 2 Dowl. N. S. 758. This seems to be still the proper course; R. S. C. Ord. LIX.; and *post* No. 318.

262.

Motion paper for leave to renew writ of summons (*g*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff for leave to renew the original [*Or*, concurrent] writ of summons in this action.

A copy of the writ and an affidavit in support accompany.

263.

Summons for leave to renew writ of summons (*g*).

Formal parts: see post No. 881.

on the part of the plaintiff, that he may be at liberty to renew the original [*Or*, concurrent] writ of summons in this action.

264.

Affidavit in support of application for leave to renew writ of summons (*h*).

Formal parts: see post No. 693.

1. The original [*Or*, concurrent] writ of summons in this action was issued on the —— day of ——, 187—.

2. [*Show what efforts have been made to serve the defendant with the writ, or other reason for extending the time for service thereof.*]

3. [*Show means of knowledge.*] (*j*).

265.

Præcipe for renewed writ of summons (*k*).

187—. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

Seal renewed writ of summons in this action, indorsed as follows.

[*Copy original writ and the indorsements.*]

[*Name and address of solicitor or party issuing the writ; see ante* No. 21.]

(*g*) For form of affidavit in support, see *post* No. 264.

(*h*) For the contents of this affidavit, see R. S. C. Ord. VIII. 1, and *ante* p. 125, note (*f*).

(*j*) See 15 & 16 Vict. c. 86, s. 37; Ord. V., Feb. 1861, rule 23; Dan. Pr. 789.

(*k*) See R. S. C. Ord. VIII. 1; and App. (A), Part I., No. 5. Upon suing out a renewed writ, a fee of 2*s*. 6*d*. is payable whether the action be on the higher or on the lower scale; Ord. as to Court Fees, 28 Octr., 1875, Sched.; Wilson, 506; the fee is payable by a stamp either impressed or adhesive; Ord. as to Fees, 22 April, 1876, Sched.; Wilson, 522.

Section VIII.—Amending the Writ (*a*).

266.
Motion paper to amend clerical errors in writ (*b*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff for leave to amend the writ of summons in this action and the copy thereof filed with the Record and Writ Clerk [*Or*, with the Registrar of the District Registry at ——] by [*Here state the correction which it is desired to make, as:*]

substituting the name "Smythe" for the name "Smith" throughout the said writ; *Or*, substituting the date "1876" for the date "1867" in the indorsement of claim on the said writ.

267.
Petition of course for like (*b*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff.

Showeth as follows:

1. On the —— day of ——, 187—, your petitioner issued a writ of summons in this action out of the Chancery Division of this honourable Court.

2. Your petitioner has since discovered clerical errors in the said writ.

Your petitioner therefore humbly prays that he may be at liberty to amend the said writ and the copy thereof filed with the Record and Writ Clerk [*Or*, with the Registrar of the District Registry at ——] by [*Continue as in* No. 266 *ante, to end*].

And your petitioner will ever pray, *&c.*

(*a*) The plaintiff may, by leave of the Court or a Judge, amend the statement (required by R. S. C. Ord. II. 1, to be indorsed on the writ of summons) of the nature of the claim made, or of the relief or remedy required in the action, so as to extend it to any other cause of action or any additional remedy or relief; R. S. C. Ord. III. 2; see *Colebourne* v. *Colebourne*, 1 Ch. D. 690. When once a statement of claim has been delivered, it is unnecessary to amend the indorsement of claim on the writ; *Large* v. *Large*, W. N. (1877), 198; see *Eyre* v. *Cox*, 24 W. R. 317. The Court or Judge may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons in such manner and on such terms as may seem just; R. S. C. Ord. XXVII. 11 (R. S. C. Feb., 1876, rule 6); see *Caldwell* v. *Pagham Harbour Coy.*, 2 Ch. D. 221.

(*b*) An order for leave to amend the writ by the correction of merely clerical errors therein, in names, dates, or sums, may be obtained at any time upon motion or petition without notice. The motion paper or petition, and also the order, should specify the errors which are to be corrected. For form of order, see Seton, ed. 3, 1251, No. 1.

268.
Motion paper for leave to amend writ of summons (*c*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff for leave to amend the writ of summons in this action and the copy thereof filed with the Record and Writ Clerk [*Or*, with the Registrar of the District Registry at ——], as he shall be advised [*If an injunction has been obtained* (*d*), *add :*] without prejudice to the injunction awarded in this action.

The writ has been served, but no statement of defence has yet been delivered.

269.
Petition of course for the like (*c*).

Formal parts : see post No. 1576.

The humble petition of the plaintiff.

Showeth as follows :

1. On the —— day of ——, 187—, your petitioner issued a writ of summons in this action out of the Chancery Division of this honourable Court.

2. The defendant has been served with the said writ of summons, but no statement of defence has yet been delivered in this action.

3. Your petitioner is now advised to amend the said writ of summons.

Your petitioner therefore humbly prays that he may be at liberty to amend the said writ of summons and the copy thereof filed with the Clerk of Records and Writs [*Or*, with the Registrar of the District Registry at ——], as he shall be advised [*If an injunction has been obtained* (*d*), *add :*] without prejudice to the injunction awarded in this action.

And your petitioner will ever pray, *&c.*

(*c*) Where the writ of summons has not been served, the plaintiff may amend the indorsement of claim on the writ without any order ; in other cases an order must be obtained. At any time before the delivery of a statement of defence in the action, an order to amend the writ of summons may be obtained on motion or petition of course ; after delivery of a statement of defence, an order to amend the writ may be obtained on motion or petition of course provided that all parties consent thereto ; in any other case the application for an order to amend the writ must be by summons on notice ; except where it is desired merely to amend clerical errors in the writ, for which purpose an order may at any time be obtained on motion or petition of course ; see note (*b*) to No. 266 *ante*. Where notice of trial has been given, or a notice of motion for an injunction or receiver is pending, the plaintiff should, before as well as after defence delivered, make a special application by summons on notice, for leave to amend without prejudice to the notice of trial or the notice of motion for an injunction or a receiver, as the case may be, otherwise the amendment will operate as a waiver of such notice ; Dan. Pr. 1523 ; *Earl de la Warr* v. *Cavendish*, V.-C. W., 22 Decr., 1865, Reg. Lib. A. 2421.

(*d*) Where the writ is amended after an injunction has been awarded, it is usual, though not always indispensable, for the order giving liberty to amend

270. Summons for leave to amend writ of summons (e).

Formal parts : see post No. 881.
on the part of the plaintiff, that he may be at liberty to amend the writ of summons in this action and the copy thereof filed with the Record and Writ Clerk [*Or*, with the Registrar of the District Registry at ——] by [*Here specify the nature of the amendment which it is desired to make*] ;

[*If a notice of motion for an injunction or for a receiver is pending* (*f*), *add :*] without prejudice to the notice of motion for an injunction [*Or*, for a receiver] in this action ;

[*If an injunction has been obtained* (*g*), *add :*] without prejudice to the injunction awarded in this action ;

[*If notice of trial has been given* (*h*), *add :*] without prejudice to the notice of trial in this action ;

[*Conclude :*] And that the costs of this application may be costs in the action.

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271. Summons for further time to amend (r).

Formal parts : see post No. 881.
on the part of the plaintiff, that he may have —— days' further time to amend the writ of summons in this action, pursuant to the

to be expressed to be without prejudice to the injunction, and the order of course to amend may be obtained in this form ; Dan. Pr. 349, 350, and notes (*f*) and (*g*) ; *Harvey* v. *Hall*, L. R. 11 Eq. 31.

(*e*) For the cases in which the application for leave to amend the writ should be by summons on notice, see note (*c*) to No. 268 *ante*. The application should be by summons and not by motion ; see *Marriott* v. *Marriott*, 26 W. R. 416.

(*f*) See Dan. Pr. 1523 ; and note (*c*) to No. 268 *ante*.

(*g*) See note (*d*) to No. 268 *ante*.

(*h*) See *Earl de la Warr* v. *Cavendish*, V.-C. W., 22 Decr. 1865, Reg. Lib. A. 2421.

(*r*) If a party who has obtained an order for leave to amend, does not amend within the time limited for that purpose by the order, or if no time is thereby limited within fourteen days from the date of the order, the order to amend will on the expiration of the time limited, or of the fourteen days, as the case may be, become *ipso facto* void unless the time is extended by the Court or a Judge ; R. S. C. Ord. XXVII. 7. This rule in terms applies only to the case of an order for leave to amend a pleading, but it would probably be extended to the case of an order for leave to amend a writ also ; or the case might be held to come within Cons. Ord. IX. rules 17 & 24, which apply to the case of an order for leave to amend a bill, and are similar in effect to rule 7 of Ord. XXVII. above cited. In the computation of the time, the time of the long vacation is reckoned ; see R. S. C. Ord. LVII. 5 ; a writ of summons not being a pleading ; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 100. The time may be enlarged by the Court or a Judge ; R. S. C. Ord. XXVII. 7 ; Ord. LVII. 6 ; and such enlargement may apparently be ordered, although the time has previously expired, notwithstanding the provision that upon the expiration of the time allowed, the order shall become *ipso facto* void ; R. S. C. Ord. LVII. 6 ; compare *Re Jones, Eyre* v. *Cox*, 25 W. R. 303, where the time for renewing a writ of summons was enlarged after the writ had under R. S. C. Ord. VIII. 1, ceased to be in force by reason of the lapse of time.

order dated the —— day of ——, 187— ; and that the costs of this application may be costs in the action (*s*).

272.

Summons for leave to amend, notwithstanding time has expired (*r*).

Formal parts : see post No. 881.
on the part of the plaintiff, that, notwithstanding the expiration of the time limited, he may be at liberty, on or before the —— day of ——, 187—, to amend the writ of summons in this action pursuant to the order dated the —— day of ——, 187—; and that the costs of this application may be costs in the action (*s*).

273.

Præcipe for amended writ of summons (*t*).

187—. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between —— . . . Plaintiff,
and
—— . . . Defendant.

Seal amended writ of summons in this action.
Dated —— day of ——, 187—.
[*Name and address of solicitor or party issuing the writ : see ante* No. 21].

274.

Notice of motion to strike out amendments (*u*).

Formal parts : see post No. 1571.
on the part of the defendant [*Or*, of the defendant A. B.], that the amendments made in the writ of summons in this action since

(*r*) See note (*r*) to No. 271 *ante*.

(*s*) See note (*d*) to No. 402 *post*.

(*t*) It is only necessary to sue out an amended writ of summons in the case where by the order a defendant or defendants is or are added ; R. S. C. Ord. XVI. 15. The amended writ is issued by being sealed by the proper officer, *i.e.*, the Record and Writ Clerk or the district registrar ; R. S. C. Ord. V. 6. On issuing it a copy of the amended writ of summons must be filed with him ; R. S. C. Ord. XVI. 15. On issuing an amended writ of summons a fee of 2*s.* 6*d.* is payable ; Ord. as to Court Fees, 28 Octr., 1875, Sched. ; Wilson, 506. The fee is paid by a stamp impressed upon or adhesive to the amended writ ; Ord. as to Fees, 22 April, 1876, Sched. ; Wilson, 522. The parties whose names are added as defendants must be served with the amended writ of summons in the same manner as original defendants are served, or in such manner as may be prescribed by any special order, and the proceedings as against the defendants so added, will be deemed to have begun only on the service thereof ; R. S. C. Ord. XVI. 13, 15. In other cases than that above mentioned (viz. where by the order a defendant or defendants is or are added), no amended writ of summons is sued out, but the amendment is made in the copy writ filed with the Record and Writ Clerk or district registrar on issuing the writ, by leaving the order to amend with that officer.

(*u*) If the amendments introduced into the writ are not warranted by the

the order dated the —— day of ——, 187— (*v*), may be disallowed and may accordingly be struck out, and that the said writ of summons and the copy thereof filed with the Clerk of Records and Writs [*Or*, with the Registrar of the District Registry at ——] may be restored to the state in which they respectively were before such amendments were made; and that the plaintiff may be ordered to pay to the said defendant [*Or*, defendant A. B.] his costs occasioned by such amendments, and of striking out the same and of this application.

275. Notice of motion to discharge irregular order to amend and to strike out amendments (*w*).

Formal parts: see post No. 1571.
on the part of the defendant [*Or*, defendant A. B.], that the order made in this action and dated the —— day of ——, 187— (*v*), whereby it was ordered that [*Recite the ordering part*] may be discharged; and that the amendments made [*Continue as in* No. 274 *ante, to end*].

276. Notice of motion for payment of defendant's costs of claim indorsed on writ of summons, but abandoned by amendment (*x*).

Formal parts: see post No. 1571.
on the part of the defendant [*Or*, of the defendant A. B.] that the plaintiff may be ordered to pay to the defendant [*Or*, to the defendant A. B.] so much of the said defendant's costs of this action as have been occasioned by the claim for [*State what*], endorsed on the writ [*Or*, original writ] of summons in this action; and also the said defendant's costs of this application.

order to amend, or are improper, the defendant should move on notice that the amendments be struck out and the writ and the copy thereof filed with the officer who issued it under R. S. C. Ord. V. rules 7, 8, be restored to their original condition; see Dan. Pr. 351, and note (*q*). Where a common order to amend as the plaintiff shall be advised, has been obtained, it would seem to be irregular to amend by striking out a distinct cause of action; R. S. C. Ord. XXIII. 1; and where such an amendment is made under such an order, the defendant may either apply to have the amendment disallowed and the writ restored to its original state, or he may waive the irregularity and apply for the payment of any costs that he may have incurred in respect of the matter so withdrawn; see Dan. Pr. 351, 352, and notes (*r*), (*s*), and (*t*), and *post* No. 276, and note (*x*).

(*v*) Order to amend.

(*w*) See Dan. Pr. 347 and note (*j*); *Ainslie* v. *Sims*, 17 Beav. 174; *Duncombe* v. *Lewis*, 10 Beav. 273; *Fletcher v. Moore*, 11 Beav. 617; *Bainbrigge* v. *Baddeley*, 12 Beav. 152; *Attorney-General* v. *Nethercoot*, 2 My. & Cr. 604. An irregular order to amend is deemed to be valid until it is discharged; Dan. Pr. 347, and note (*k*); and the irregularity may be waived; Dan. Pr. 348, and note (*l*); *Kettlewell* v. *Barstow*, L. R. 10 Eq. 210. For the cases in which an order to amend is irregular, see *ante* No. 268, and note (*c*).

(*x*) Where the plaintiff amends his writ by striking out any claim in respect of which the defendant has incurred costs, the defendant may, notwithstanding such withdrawal may be irregular under R. S. C. Ord. XXIII. 1, waive the irregularity, and apply to have such costs taxed and paid to him; Dan. Pr. 351, 352, and notes (*r*), (*s*), and (*t*).

Section IX.—Registering the Action as a Lis Pendens.

277. Memorandum for the registry, or re-registry, of a writ of summons, special case, or administration summons, as a *lis pendens* (z).

Filed (*a*) the —— day of ——, 187—, by A. B., of [*Place of business*], Plaintiff's solicitor. [*Or*, by A. B., of [*Place of residence*], Plaintiff in person.]	Lis Pendens. A (*b*) writ of summons issued out of [*Or*, A special case—*Or*, An administration summons filed in] the Chancery Division of the High Court of Justice on the —— day of ——, 187— (*c*). Title of the Cause. [*Set out the names of all the parties* (*d*).]

NAME, ETC., OF THE PERSON WHOSE ESTATE IS INTENDED TO BE AFFECTED.

Surname.	Christian name or names.	Usual or last known place of abode.	Title, trade, or profession.
Brown	Edward James	No. 800, Oxford Street, in the county of Middlesex.	Linen-draper.

(z) See Dan. Pr. 327, 328; 2 & 3 Vict. c. 11; 18 & 19 Vict. c. 15, s. 6. As to the registry of a special case, see Dan. Pr. 1704; 13 & 14 Vict. c. 35, s. 17; and of an administration summons, see Dan. Pr. 1073; 15 & 16 Vict. c. 86, s. 46. The memorandum must be on parchment; a form may be obtained at the registry. A fee of 2*s.* 6*d.* is payable on registering a *lis pendens*, though more than one name may have to be registered; and a fee of 1*s.* on re-registering the same; Ord. as to Court Fees, Octr., 1875, Sched.; Wilson, 506. These fees are payable by a stamp impressed on the memorandum; Ord. as to Fees, April, 1876, Sched.; Wilson, 522.

(*a*) If for re-registry, say, "Filed for re-entry."

(*b*) If for re-registry, say, "A re-entry of a writ of summons." [*Or*, "of a special case"—*Or*, "of an administration summons"].

(*c*) If for re-registry, add here, "Entered before on the —— day of ——, 187—."

(*d*) In the case of an administration summons, the full title of the matter and cause should be set out, exactly as it appears in the summons.

278. Acknowledgment of satisfaction of a *lis pendens* (*c*).

Satisfaction is acknowledged between A. B. and C. D., as to a writ of summons issued out of [*Or*, a special case—*Or*, an administration summons filed in] the Chancery Division of the High Court of Justice on the —— day of——, 187—, in an action [*or as may be*] wherein the said A. B. is plaintiff, and the said C. D. is defendant [*or as may be*]: a memorandum of which said writ of summons [*or as may be*] was left with the Senior Master of the Common Pleas Division of Her Majesty's High Court of Justice on the —— day of ——, 187—, to affect the estate of the said C. D.

And I, the said A. B. [*Or*, I, E. F., the executor (*Or*, administrator) of the said A. B.], do hereby expressly nominate and appoint G. H., of [*Place of business*], a solicitor of the Supreme Court, to witness and attest the execution of this acknowledgment of satisfaction.

Signed by the said A. B. [*Or*, E. F.], in the presence of me, the undersigned G. H., one of the solicitors of the Supreme Court. And I hereby declare myself to be the solicitor for and on behalf of the said A. B. [*Or*, E. F.], expressly named by him, and attending at his request, to inform him of the nature and effect of this acknowledgment of satisfaction (which I accordingly did before the same was signed by him); and I also declare that I subscribe my name as witness thereto, as such solicitor.

G. H., of (*Place of business*).

A. B.,
the above named plaintiff,
[*Or*, E. F., the executor (*Or*, administrator) of the above named plaintiff A. B.]
the —— day of ——, 187—.

(*c*) Upon the filing of an acknowledgment in this form, the senior Master of the Common Pleas Division may enter satisfaction as to the *lis pendens*, 23 & 24 Vict. c. 115, s. 2; Dan. Pr. 328, 329. The acknowledgment must be on parchment, and must be signed by the plaintiff, his executor or administrator, and attested by a solicitor. Where there are several plaintiffs, and the signatures of all to the acknowledgment cannot be obtained, those who sign should do so on behalf of themselves and their co-plaintiffs; as thus: "A. B., one of the above-named plaintiffs, on behalf of myself and C. D., the other plaintiff above named:" see Pask's Sup. 31, 32, ed. 3. For full instructions as to executing an acknowledgment of satisfaction, see *Ibid.*, 31—34. Under the 23 & 24 Vict. c. 115, s. 2, the fee for entering satisfaction was 2*s.* 6*d.*, but no such fee is given by the Ord. as to Court Fees of Octr., 1875. For a certificate of entry of satisfaction, a fee of 1*s.* is payable by a stamp impressed on the certificate; Ord. as to Court Fees, Oct., 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522.

279.
Petition of course for the entry of satisfaction of a *lis pendens*, by consent (*f*).

Formal parts : see post No. 1576.

The humble petition of the plaintiff [*Or*, defendant A. B.]. Showeth as follows :

1. [*Show the institution of the action ; as thus :*] On the —— day of ——, 187—, your petitioner [*Or*, the plaintiff] issued his writ of summons in this action out of the Chancery Division of this Honourable Court against the defendant A. B. [*Or*, against your petitioner].

Or, On the —— day of ——, 187—, your petitioner [*Or*, the plaintiff] filed a special case in this cause against the defendant A. B. [*Or*, against your petitioner].

Or, On the —— day of ——, 187—, a summons in this matter and cause was taken out at the Chambers of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], on the part of your petitioner against the defendant A. B. [*Or*, on the part of the plaintiff against your petitioner], for the administration of the estate of the above named J. T.; and a duplicate of the said summons was filed in the office of the Clerks of Records and Writs on the —— day of ——, 187—.

2. [*State the registration as a lis pendens ; as thus :*] On the —— day of ——, 187—, a memorandum of the said writ of summons [*Or*, special case ; *Or*, summons] was filed with the Senior Master of the Common Pleas Division of her Majesty's High Court of Justice, for entry as a *lis pendens*, pursuant to the statute in this behalf, so as to affect the estate of the defendant A. B. [*Or*, your petitioner] : who was described in such memorandum as [*Insert name and place of abode, &c.*].

If so : and on the —— day of ——, 187—, a like memorandum was filed with the said Senior Master, for re-entry pursuant to the said statute.

3. [*State desire to vacate entry ; as thus :*] The purposes for which the said writ of summons [*Or*, special case ; *Or*, summons] was registered as aforesaid have been satisfied, and your petitioner is desirous that the entry of the said *lis pendens* should be discharged.

Your petitioner therefore humbly prays, that the proper officer may be at liberty to enter satisfaction in respect of the said *lis pendens*, so registered as

(*f*) See Dan. Pr. 328. For order in like case, on petition of plaintiff, see *Whitney* v. *Smith*, M. R. 27 April, 1870, Rolls' Lib. ; and on petition of defendants, the plaintiff consenting, see *Ecclesiastical Commissioners for England* v. *Marshall*, M. R. 14 July, 1870, Rolls' Lib. The practice of getting the entry of a *lis pendens* satisfied under an order obtained on petition of course is still frequently resorted to, notwithstanding the 23 & 24 Vict. c. 115, s. 2, mentioned above ; and see Pask's Sup. 30, note (*l*), ed. 3.

aforesaid, in the books kept by him for that purpose (*g*).

And your petitioner will ever pray, &c.

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280. Special petition for the entry of satisfaction of a *lis pendens* (*h*).

Formal parts : see post No. 1578.

The humble petition of the above-named defendant A. B. Showeth as follows :

1. 2. [*State the institution of the cause, and the registration of the lis pendens : as in paragraphs* 1, 2 *of* No. 279 *ante.*]

3. [*State ground for requiring the registration to be vacated.*]

4. [*State refusal to consent to the registration being vacated ; as thus :*] Your petitioner has applied to the said plaintiff to acknowledge satisfaction, or cause satisfaction to be entered, or consent to satisfaction being entered, in respect of the said *lis pendens*, in the proper books kept for that purpose ; but the said plaintiff refuses to comply with such application.

Your petitioner therefore humbly prays, that the registration of the said *lis pendens*, as against your petitioner, may be vacated ; and that an entry of the discharge of such *lis pendens* may be directed to be entered on the register kept by the Senior Master of the Common Pleas Division of her Majesty's High Court of Justice, pursuant to the statute in this behalf ; and that the plaintiff C. D. may be ordered to pay to your petitioner all his costs and expenses occasioned by the registration of the said *lis pendens*, and of this application, and of vacating the said registration [*or as may be*] : such costs to be taxed by the Taxing Master.

Or that this honourable Court [*Conclude as in* No. 1578 *post ; and add foot note* No. 1579.]

(*g*) When the defendant petitions, the consent of the plaintiff's solicitor to the prayer must be obtained. For form of consent, see *post* No. 1577. If the plaintiff declines to apply, or to consent to an application by the defendant, for an order to enter satisfaction, the order may be obtained on special petition, motion, or summons on notice to the plaintiff ; see Dan. Pr. 328 ; *Pooley* v. *Bosanquet*, 7 Ch. D. 541 ; and Forms 280 and 281 *post.*

(*h*) See Dan. Pr. 328, 329 ; 30 & 31 Vict. c. 47, s. 2 ; and *Clutton* v. *Lee*, 7 Ch. D. 541, n. (1) ; 24 W. R. 607. The application must be entitled in the matter of the Act 30 & 31 Vict. c. 47, and in the matter of the registered action ; *Clutton* v. *Lee*, *ubi sup.* Notice must be given to the plaintiff, otherwise an order *nisi* only will be made ; *Pooley* v. *Bosanquet*, 7 Ch. D. 541. The fee for every entry of discharge under the Act is 2*s.* 6*d.* ; and for every certificate of such entry, 1*s.*

281. Notice of motion or summons for the entry of satisfaction of a *lis pendens* (*j*).

Formal parts: see post No. 1571, *or* 881.

on the part of the defendant A. B.

1. That the registration, on the —— day of ——, 187—, of the writ of summons in this action [*Or*, of the special case; *Or*, administration summons in this cause] as a *lis pendens*, in the register kept by the Senior Master of the Common Pleas Division of her Majesty's High Court of Justice, to affect the estate of the applicant, may be vacated; and that an entry of the discharge of such *lis pendens* may be directed to be entered on the said register.

2. That the plaintiff C. D. may be ordered to pay to the applicant all his costs and [*Continue as in* No. 280 *ante, to* Taxing Master].

Section X.—The Service of the Writ.

(1.) *In General* (*a*).

(*j*) See last note. For order on summons, previous to the 30 & 31 Vict. c. 47, s. 2, see *Fowler* v. *Liles*, V.-C. S., 15 June, 1855, Reg. Lib. A. 1037, V.-C. S.; Dan. Pr. 329, note (*i*).

(*a*) Where practicable the service of the writ of summons must be personal; R. S. C. Ord. IX. 2; personal service is effected by leaving with each defendant a true copy of the writ, and showing him the original if he desires it; *per* Alderson, B., in *Goggs* v. *Huntingtower*, 12 M. & W. 503. As to personal service in general, see Lush, Pr. pp. 371, *et seq.* When husband and wife are both defendants to the action, service on the husband will be good service on the wife, but the Court or a Judge may order that the wife shall be served with or without service on the husband; R. S. C. Ord. IX. 3; for form of application for such an order, see *ante* No. 182. When an infant is a defendant to the action, service on his or her father or guardian, or, if none, then upon the person with whom such infant resides, or under whose care he or she is, will, unless the Court or Judge otherwise orders, be good service on the infant; but the Court or Judge may order that service made or to be made on the infant shall be deemed good service; R. S. C. Ord. IX. 4; for forms of application for such an order, see *ante* Nos. 68, 69. When a lunatic, or a person of unsound mind not so found by inquisition, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he or she is, will, unless the Court or Judge otherwise orders, be good service on such defendant; R. S. C. Ord. IX. 5; for forms of application for an order as to service on such a defendant, see *ante* Nos. 111 to 113, and Nos. 135 to 137. Where two or more persons who are liable as copartners are under the provisions of R. S. C. Ord. XVI. 10, sued in the name of their firm, the writ may be served either upon any one or more of the partners, or at the principal place within the jurisdiction of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there; and such service will be good service upon the firm; R. S. C. Ord. IX. 6.

282. Acceptance of service of writ of summons, and undertaking to appear thereto (*b*).

—— *v* ——.

I hereby accept service of the writ of summons in this action on behalf of the defendant [*Or*, of the defendant A. B.], and undertake to enter an appearance thereto in due course for the said defendant.

Dated —— day of ——, 187—.

X. Y.,
Solicitor for the defendant A. B.

Similarly where under the provisions of R. S. C. Ord. XVI. 10*a* (R. S. C. June, 1876, rule 8), a single person carrying on business in the name of a firm apparently consisting of more than one person is sued in the firm's name, the writ may be served either upon such person, or at the principal place within the jurisdiction of the business so carried on, upon any person having at the time of service the control or management of the business there; and such service will be good service on the person so sued; R. S. C. Ord. IX, 6*a* (R. S. C. June, 1876, rule 4); these rules as to service upon partners who are sued in the name of their firm, do not apply to the service of a writ issued under the Bills of Exchange Act; *Pollock* v. *Campbell*, 1 Exch. D. 50. Whenever by any statute provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided; R. S. C. Ord. IX. 7. The principal statutes whereby such provision has been made, are the C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 16, whereby a writ of summons issued against a corporation aggregate may be served on the head officer thereof, or on the town clerk, clerk, treasurer, or secretary thereof; and such a writ issued against the inhabitants of a hundred or other like district, may be served on the high constable or any one of the high constables thereof; and such a writ issued against the inhabitants of any county of any city or town, or against the inhabitants of any franchise, liberty, city, town, or place, not being part of a hundred or other like district, may be served on some peace officer thereof; and the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 62, whereby any summons, notice, order, or other document required to be served on a company incorporated under that Act, may be so served by leaving the same at, or sending it through the post in a prepaid letter addressed to the company at, their registered office; and see 7 Wm. 4 & 1 Vict. c. 73, s. 26; the Companies Clauses Consolidation Act, 1845 (8 Vict. c. 16), s. 135; the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), s. 134; and the Railways Clauses Consolidation Act, 1845 (8 Vict. c. 20), s. 138. In an action to recover land, service of the writ of summons may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property; R. S. C. Ord. IX. 8.

(*b*) No service of the writ is required when the defendant, by his solicitor, agrees to accept service, and enters an appearance, R. S. C. Ord. IX. 1. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant will be liable to an attachment; R. S. C. Ord. XII. 14.

283.
The like, by indorsement on writ (*c*).

—— *v.* ——.

I hereby accept service of the within writ of summons on behalf of the defendant [*Or*, of the defendant A. B.], and undertake to enter an appearance thereto in due course for the said defendant.

Dated —— day of ——, 187—.

X. Y.,
Solicitor for the defendant A. B.

(2.) *Substituted Service* (*d*).

284.
Motion paper for order for substituted or other service, or for the substitution of notice for service (*e*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff, that he may be at liberty to serve the writ of summons in this action on the defendant A. B. [*Here describe the mode of service proposed, as:*]

by leaving at ——, the place of residence, and ——, the place of business of the said defendant A. B., a copy of the said writ of summons, together with a notice (*f*) informing the said defendant that this honourable Court has authorised service of the said writ of summons by leaving copies of the said writ at the places aforesaid, and that he is required to appear thereto, otherwise the said action will proceed against him as for default of appearance (*g*); *Or*,

by sending a copy of the said writ of summons through the post in a pre-paid letter, addressed to the said defendant A. B., at ——, together with a notice (*f*), informing him that this honourable Court has authorised service of the said writ of summons, by sending a copy thereof through the post in manner aforesaid, and that he is required to appear thereto,

(*c*) See note (*b*) to No. 282 *ante*.

(*d*) If it be made to appear to the Court or a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service as may seem just; R. S. C. Ord. IX. 2. This rule does not apply to the service of writs issued under the Bills of Exchange Act, 18 & 19 Vict. c. 67; *Pollock* v. *Campbell*, 1 Exch. D. 50. If personal service can not be effected in such a case, the proper course is to apply for leave to proceed as if personal service had been effected; for forms, see *post* Nos. 1499 to 1502.

(*e*) See R. S. C. Ord. IX. 2; and *supra*, note (*d*). For form of affidavit in support, see *post* No. 286.

(*f*) For form of notice, see *post* No. 288.

(*g*) See *Cook* v. *Dey*, 2 Ch. D. 218; *Crane* v. *Jullion*, 2 Ch. D. 220; *Capes* v. *Brewer*, 24 W. R. 40. In *Cook* v. *Dey* and *Crane* v. *Jullion*, the action was ordered to be advertised as well.

otherwise the said action will proceed against him as for default of appearance (*h*); *Or*,

by inserting once in the "London Gazette," once in the "Times," and once in the "Daily News" newspapers, a notice (*j*), informing the said defendant that this action has been commenced, and that this honourable Court has authorised service of the writ of summons therein, by the insertion of the said notices, and that the said defendant is required to appear to the writ of summons in the said action, otherwise the said action will proceed against him as for default of appearance (*k*); *Or*,

by serving a copy of the said writ of summons, together with a copy of the order to be made hereon upon [*Describe the proposed substitute, as:*] C. D., of [*residence and addition*] (*l*).

And that the plaintiff may thereupon be at liberty to proceed in this action in the same manner as if personal service on the said defendant A. B., of the writ of summons therein had been effected at the time of leaving the said copies of the said writ in manner aforesaid [*Or*, of sending the said copy of the said writ through the post in manner aforesaid; *Or*, of the insertion of the last of the said notices in manner aforesaid; *Or*, of serving a copy of the said writ on the said C. D. in manner aforesaid].

An affidavit in support accompanies.

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285. Summons for like order (*m*).

Formal parts: see post No. 881.

On the part of the plaintiff, that he may be at liberty to [*Continue as in last form, to end*].

(*h*) *Dymond* v. *Croft*, 24 W. R. 842; *Raphael* v. *Ongley*, 34 L. T. 124; in the latter case advertisements were directed in addition.

(*j*) For form of notice, see *post* No. 289.

(*k*) See *Cook* v. *Dey*, 2 Ch. D. 218; *Crane* v. *Jullion*, 2 Ch. D. 220; *Waters* v. *Waters*, 24 W. R. 190; *Whitley* v. *Honeywell*, 24 W. R. 851; *Raphael* v. *Ongley*, 34 L. T. 124; *O'Sheehy* v. *O'Sheehy*, 34 L. T. 367.

(*l*) *Waters* v. *Waters*, 24 W. R. 190; *Dymond* v. *Croft*, 24 W. R. 842; *O'Sheehy* v. *O'Sheehy*, 34 L. T. 367. In *Waters* v. *Waters* and *O'Sheehy* v. *O'Sheehy*, the action was ordered to be advertised as well. As a general rule, the Court will only substitute service upon a person who is the agent of the defendant for the particular matter involved in the suit, or who is the general agent of the defendant managing all his affairs; see Dan. Pr. 370 *et seq.* The order for substituted service must be served upon the substitute at the same time that the writ of summons is served.

(*m*) See notes to last form.

286.
Affidavit in support (*n*).

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, the writ of summons in this action was issued out of the Chancery Division of this honourable Court against the defendant A. B., but no appearance thereto has been entered by or on behalf of the said defendant, as I know from having on the —— day of ——, 187—, searched in the cause book kept in the office of the Clerks of Records and Writs [*Or*, in the District Registry at ——], out of which the said writ of summons was issued (*o*).

2. [*Show what efforts have been made to effect personal service of the writ of summons on the defendant, and that it is impracticable to effect such personal service promptly.*]

3. [*State how the substituted or other service is proposed to be effected.*]

4. [*Show means of knowledge.*]

287.
Separate affidavit of no appearance having been entered (*p*).

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, I did duly search in the cause book kept in the office of the Clerks of Records and Writs [*Or*, in the District Registry at ——], out of which the writ of summons in this action was issued, for the purpose of ascertaining

(*n*) Every application to the Court or a Judge, under R. S. C. Ord. IX. rule 2, for an order for substituted or other service, or for the substitution of notice for service, must be supported by an affidavit setting forth the grounds upon which the application is made; R. S. C. Ord. X. It is sufficient if the affidavit shows that reasonable efforts have been made to effect personal service, but that such service can not be promptly effected; R. S. C. Ord. IX. 2. It is not necessary, as was formerly the case under the C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 17, to prove either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same.

(*o*) The affidavit should state the issuing of the writ, and that no appearance has been entered thereto by the defendant. When the writ has been issued out of the London office, it will be sufficient in every case to search the cause book there. If the writ has been issued out of a district registry, it will, if the defendant resides or carries on business within that district, be sufficient to search the cause book kept at the district registry; but if the defendant neither resides nor carries on business within that district, it will be necessary to search both the cause book kept at the district registry and that kept at the Record and Writ Clerks' Office, and the affidavit must then state that both cause books have been searched. For separate affidavit as to search for appearance, see next form.

(*p*) See note (*o*) to last form.

if any appearance thereto had been entered by or on behalf of the defendant A. B.

2. It appeared by the said book that no appearance to the said writ of summons had then been entered by or on behalf of the said defendant A. B., and I verily believe that the said defendant has not appeared to the said writ.

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288. Notice to accompany copy writ of summons.

Formal parts: see ante No. 21.

Take notice that this honourable Court has authorised service of the writ of summons in this action on you, the above-named defendant A. B., [*Here describe the mode of service authorised by the order, as:*]

by leaving a copy of the said writ of summons, together with this notice at ——, the place of residence, and ——, the place of business of you, the said defendant A. B.; *Or,*

by sending a copy of the said writ of summons, together with this notice, through the post in a pre-paid letter, addressed to you the said defendant A. B. at ——;

And further take notice that you are required to appear to the said writ of summons according to the exigency thereof, otherwise the said action will proceed against you as for default of appearance.

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289. Notice for insertion in newspapers, in substitution for service of writ of summons (*q*).

Formal parts: see ante No. 21.

Take notice that this action was, on the —— day of ——, 187—, commenced against you in the Chancery Division of her Majesty's High Court of Justice by [*Here insert plaintiff's name*], for [*Here copy claim endorsed on writ*], and that the Court has authorised service of the writ of summons in the said action on you the said defendant A. B., by the insertion of this notice once in the "London Gazette," once in the "Times," and once in the "Daily News" newspapers.

And further take notice that you are required to appear to the said writ of summons within eight days after the insertion of the last of the said notices in manner aforesaid, inclusive of the day of such insertion, otherwise the action will proceed against you as for default of appearance.

(*q*) See *Cook* v. *Dey*, 2 Ch. D. 218; *Crane* v. *Jullion*, 2 Ch. D. 220.

290. Affidavit in support of application for leave to serve writ of summons, or notice of a writ of summons, out of the jurisdiction (*s*).

(3.) *Service out of the Jurisdiction* (*r*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the Supreme Court of Judicature Acts, 1873 and 1875.

(*r*) Service out of the jurisdiction of a writ of summons, or notice of a writ of summons, may be allowed by the Court or a Judge whenever the whole or any part of the subject-matter of the action is (1) land or stock or other property situate within the jurisdiction; or (2) any act, deed, will, or thing affecting such land, stock, or property; or (3) whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction; or (4) whenever there has been a breach within the jurisdiction of any contract wherever made; or (5) whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction; R. S. C. Ord. XI. 1. Every order giving leave to effect such service or give such notice must limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given; R. S. C. Ord. XI. 4; and see *ante* No. 213, note (*m*). The application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction must be supported by evidence, by affidavit or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; R. S. C. Ord. XI. 3. When the action is brought in respect of any contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in such action, or for the breach whereof damages or other relief are or is demanded in such action, when such contract was made or entered into within the jurisdiction, or whenever there has been a breach within the jurisdiction of any contract wherever made, the Judge, in exercising his discretion as to granting leave to serve such writ or notice on a defendant out of the jurisdiction, must have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland, of a local Court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost of proceeding in England or in the place of such defendant's residence, and in all the above-mentioned cases no such leave is to be granted without an affidavit stating the particulars necessary for enabling the Judge to exercise his discretion in manner aforesaid, and all such other particulars (if any) as he may require to be shown; R. S. C. Ord. XI. 1*a* (R. S. C. June, 1876, rule 5). The application for liberty to serve out of the jurisdiction a writ of summons, or notice of a writ of summons, is made before the issuing of the writ, and at the same time as the application for leave to issue the writ. No motion is made or summons issued but the unsealed writ is left at the chambers of the Judge, together with an office copy of the affidavit in support. The order (if any) made

And in the matter of an intended action between A. B. plaintiff, and C. D. and E. F. defendants (*t*).

I, ——, of [*&c. see post* No. 693] (*u*).

1. This action is brought for the purpose of [*Here state the cause of action in respect of which the action is brought, bringing the case within one of the five classes mentioned in R. S. C. Ord. XI.* 1, *and in note* (*r*) *supra; as:*]

taking an account of what is due to me [*Or*, the plaintiff] for principal, interest, and costs, on a mortgage, dated the —— day of ——, 187—, and made between —— and ——, whereby the amount due under the said mortgage was charged upon land and houses situate at ——, in the county of ——, within the jurisdiction of this honourable Court, and of having the said mortgage enforced by foreclosure or sale; *Or*,

recovering damages for the breach of a contract made at ——, within the jurisdiction of the honourable Court, to accept and pay for cotton [*or as may be*]; *Or*,

recovering damages for the breach within the jurisdiction of this honourable Court of a contract to accept and pay for cotton; *Or*,

obtaining an injunction to restrain the defendant from transferring or otherwise parting with ten debenture bonds of the London, Chatham, and Dover Railway Company;

I am advised, and verily believe, that I [*Or*, the said plaintiff] have [*Or*, has] a good cause of action against the said defendant, in respect of the matters aforesaid (*v*).

upon the application is put upon the writ thus:—"——, 187— [*date*]. Let this writ be issued with liberty to serve it (*Or*, notice of it) on the defendant A. B., at —— or elsewhere, in the [Kingdom] of ——. The time for the defendant to enter an appearance is to be [*insert the time*] after service." As to the time to be inserted, see *ante* No. 213, note (*m*). Under this rule notice of a writ of summons may be given to a foreign corporation not having any office within the jurisdiction; *Scott* v. *Royal Wax Candle Co.*, 1 Q. B. D. 404; *Westman* v. *Aktiebolaget Snickarefabrik*, 1 Ex. D. 237. *Ingate* v. *Austrian Lloyds*, 4 C. B. N. S. 704, is no longer law. If a defendant desires to take any objection to an order giving leave to serve a writ out of the jurisdiction, he must do so by applying to set aside the order and service. He cannot take the objection by his statement of defence; *Preston* v. *Lamont*, 1 Ex. D. 361. For form of application, see *post* No. 319.

(*s*) As to the contents of this affidavit, see R. S. C. Ord. XI. 1*a* (R. S. C. June, 1876, rule 5); *Ibid.* Ord. XI. 3; *supra*, note (*r*).

(*t*) As to the title, see *Young* v. *Brassey*, 1 Ch. D. 277.

(*u*) It is not necessary that the plaintiff should make the affidavit; the solicitor may make it or any other person who can depose to the facts; *Great Australian Gold Mining Co.* v. *Martin*, 5 Ch. D. 11, 12.

(*v*) It is not sufficient to state merely that the plaintiff has a claim against the defendant; it must be stated that there is a good cause of action arising within the jurisdiction, or otherwise coming within the terms of R. S. C. Ord. XI. 1; *Great Australian Gold Mining Co.* v. *Martin*, 5 Ch. D. 1.

2. The said defendant resides, or may probably be found at ——, in the (Kingdom) of ——, out of the jurisdiction of this honourable Court, and is [*Or*, is not] a British subject.

[*If the action is brought in respect of a contract, add:*]

3. The amount or value of the property in dispute [*Or*, the amount sought to be recovered] is £——, or thereabouts.

[*If the action is brought in respect of a contract, and the defendant is resident in Scotland or Ireland, add:*]

4. There does not exist in the place of residence of the said defendant A. B. any local Court of limited jurisdiction having jurisdiction in respect of the matters in question in this action.

[*Or, according to the fact;*]

There is in the place of residence of the said defendant A. B. [*Here state what local Court of limited jurisdiction there is in such place, having jurisdiction in respect of the matters in question in the action, and show how it will be less costly and more convenient to proceed in England than in such local Court*].

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291. Notice of writ in lieu of service, to be given out of the jurisdiction (*w*).

187—. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . . Plaintiff.
and
C. D., E. F., and G. H. . Defendants.

To G. H., of [*address and description*].

Take notice that A. B., of —— has commenced an action

But it is sufficient to make out a *primâ facie* case on the affidavit; the Court will not allow the affidavit to be controverted by the other side, nor will it try the merits of the case upon an application to set aside the order for service abroad (see *per* James, L. J., in *Great Australian Gold Mining Co.* v. *Martin*, 5 Ch. D. 11, 12).

(*w*) If a defendant out of the jurisdiction is a British subject, the writ of summons is served upon him in the ordinary way by delivery of a copy of the writ; if a defendant out of the jurisdiction is not a British subject, notice in the form in the text is given to him in lieu of service of the writ; *Westman* v. *Aktiebolaget Snickarefabrik*, 1 Ex. D. 237; *Beddington* v. *Beddington*, 1 Prob. D. 426. Such notice must be given in the manner in which writs of summons are served; R. S. C. Ord. XI. 5. As to the manner in which writs of summons are served, see *ante*, p. 136, note (*a*). Where personal service on a defendant out of the jurisdiction of a writ or notice cannot be promptly effected, an order for substituted or other service may be obtained, as in case of a defendant within the jurisdiction; see *ante* Nos. 284 to 289. For the form in the text, see R. S. C. Ord. II. 5; *Ibid.*, Ord. II. 3*a* (R. S. C. June, 1876, rule 3); R. S. C. App. (A), Part 1, No. 3. The notice in lieu of service must bear the same indorsement of address as a writ of summons; see R. S. C. Ord. IV., and R. S. C. Feb., 1876, rule 3; and *post* No. 292.

against you, G. H., in the Chancery Division of her Majesty's High Court of Justice in England, by writ of that Court dated the —— day of ——, A.D. 187—; which writ is indorsed as follows [*copy in full the indorsements*], and you are required, within —— days (*x*) after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance, personally, or by your solicitor, at the Record and Writ Clerk's Office, Chancery Lane, London, in England (*a*) [*Or*, either at the District Registry at ——, in the —— of ——, in England, or at the Record and Writ Clerk's Office, Chancery Lane, London, in England (*b*)].

[*Name and address of solicitor or party giving the notice; see ante* No. 92.]

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292. Indorsement of address on notice of writ (*c*).

[*Same as* No. 226 *and* No. 227 *ante.*]

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293. Indorsement to be made on writ after service (*d*).

This writ was served by ——, on ——, the defendant [*Or*, one of the defendants], on ——day, the —— day of ——, 187—.

(*x*) Here fill in the time fixed for appearance by the order, giving leave to serve the writ, or to give notice of it, out of the jurisdiction; see *ante* No. 213, note (*m*).

(*a*) This form is to be used where the writ is issued out of the London office; R. S. C. Ord. XII. 1.

(*b*) This form is to be used where the writ is issued out of a District Registry; R. S. C. Ord. XII. 3.

(*c*) The provisions of R. S. C. Ord. IV., as to the indorsement of the address of the plaintiff, of the place of business of the solicitor suing out the writ, and of the solicitor for whom such solicitor acts as agent, and of an address for service, apply to notices for service out of the jurisdiction, as well as to writs of summons; see *ante* No. 226 and No. 227, and notes thereto.

(*d*) The person serving a writ of summons must, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff will not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ must mention the day on which such indorsement was made; R. S. C. Ord. IX. 13. This indorsement need not, however, be made in cases where there has been an order for substituted service; *Dymond* v. *Croft*, 3 Ch. D. 512.

CHAPTER V.

APPEARANCE AND OTHER PROCEEDINGS OF THE DEFENDANT BEFORE PLEADING.

SECTION I.—APPEARANCE (*a*).

(1.) *Ordinary Appearance* (*b*).

(*a*) Appearance is the process by which a person against whom an action has been commenced, submits himself to the jurisdiction of the Court, and, subject to a few exceptions, a defendant will not be permitted to take any step in the action until an appearance has been entered for him. Even if he desires to object to the regularity of the proceeding by which the plaintiff has sought to compel his appearance, he must first enter a conditional appearance; Dan. Pr. 459.

(*b*) Where the writ is issued in the London office, the defendant must appear in that office; R. S. C. Ord. XII. 1; if the writ is issued in a district registry, and the defendant resides or carries on business within the district, he must appear in the district registry; *Ibid.*, Ord. XII. 2; but if the defendant neither resides nor carries on business in the district, he may appear either in the district registry or in the London office; *Ibid.*, Ord. XII. 3. As to the effect which the place of the defendant's appearance has upon the place where the action shall proceed, see R. S. C. Ord. XII. 4, 5. The appearance is entered by the delivery to the proper officer (*i.e.*, in London the Record and Writ Clerk, in a district registry, the district registrar), of a memorandum in writing, dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person; R. S. C. Ord. XII. 6*a* (R. S. C. Feb., 1876, rule 5). The solicitor of a defendant appearing by a solicitor must state in such memorandum his place of business, and, if the appearance is entered in the London office, a place, to be called his address for service, which must not be more than three miles from Temple Bar, or, if the appearance is entered in a district registry, a place, to be called his address for service, which must be within the district; R. S. C. Ord. XII. 7. A defendant appearing in person must state in such memorandum his address, and, if the appearance is entered in the London office, a place, to be called his address for service, which must not be more than three miles from Temple Bar, or, if the appearance is entered in a district registry, a place, to be called his address for service, which must be within the district; *Ibid.*, Ord. XII. 8. If the memorandum does not contain such address it will not be received; and if any such address be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff; R. S. C. Ord. XII.

294.

Memorandum of appearance (c).

187—. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

A. B. *v.* C. D., and others.

Enter an appearance for C. D. in this action.

Dated this —— day of ——.

X. Y.,
Solicitor for the defendant.

The place of business of X. Y. is ——.
His address for service is ——,

[*Or*, C. D.,
Defendant in person.

The address of C. D. is ——,
His address for service is ——].

The said defendant requires [*Or*, does not require] a statement of claim to be filed and delivered (*d*).

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9 ; for form of such application, see *post* No. 390. Where partners are sued in the name of the firm, they must appear individually in their own names ; but all subsequent proceedings will, nevertheless, continue in the name of the firm ; *Ibid.*, Ord. XII. 12. Where any person carrying on business in the name of a firm apparently consisting of more than one person is sued in the name of the firm, he must appear in his own name ; but all subsequent proceedings will, nevertheless, continue in the name of the firm ; *Ibid.*, Ord. XII. 12*a* (R. S. C. June, 1876, rule 6). A defendant may appear at any time before judgment without an order ; R. S. C. Ord. XII. 15 ; after judgment he may not appear without an order ; Dan. Pr. 139, 462. For forms of application for such order, see *post* Nos. 296, 297. Upon receipt of the memorandum of appearance the officer will enter the appearance in the cause book ; R. S. C. Ord. XII. 11. As to the cause book, see R. S. C. Ord. V. 8. As to the effect of entering an ordinary appearance by way of waiving any objection to the writ of summons or service thereof, see *post*, p. 150, note (*k*).

(*c*) For form of memorandum of appearance, see R. S. C. Ord. XII. 10, and Appendix (A), Pt. I., No. 6. As to its contents and the mode in which the appearance is entered, see note (*b*), *supra*. If two or more defendants in the same action appear by the same solicitor and at the same time, the names of all the defendants so appearing must be inserted in one memorandum ; R. S. C. Ord. XII. 13. Upon entering the appearance a fee of 2*s.* is payable for each person for whom an appearance is entered ; Ord. as to Court Fees, 28 Octr., 1875, Sched. ; Wilson, 506. This fee is payable by means of a stamp impressed on the memorandum of appearance, where the application is entered for one defendant only ; where appearances are entered for several persons by the same memorandum, the fees for all persons beyond the first may be paid by means either of impressed or of adhesive stamps ; Ord. as to Fees, 22 April, 1876, Sched. ; Wilson, 522.

(*d*) See R. S. C. Ord. XIX. 2.

295.
Notice of appearance (*e*).

Formal parts: see ante No. 21.

Take notice that I have this day entered an appearance at the London office [*Or*, at the District Registry at ——] for the defendant A. B. to the writ of summons in this action.

Dated this —— day of ——, 187—.

(2.) *Appearance after Judgment* (*f*).

(*e*) It is customary to give notice in every case; but the notice is only required in three cases: (1) where the defendant appears elsewhere than where the writ is issued, in which case he must on the same day give notice of his appearance to the plaintiff's solicitor or to the plaintiff himself (if he sues in person), either by notice in writing served in the ordinary way at the address for service within the district of the district registry out of which the writ issued, or by prepaid letter directed to such address, and posted on that day in due course of post; R. S. C. Ord. XII. 6 (R. S. C. Feb., 1876, rule 5); otherwise the plaintiff will be entitled to enter judgment as for want of appearance; *Smith* v. *Dobbins*, 26 W. R. 59; affirmed on appeal, 26 W. R. 122; (2) where the defendant appears after the time limited for appearance, in which case he must on the same day give notice thereof to the plaintiff's solicitor, or to the plaintiff himself (if he sues in person); R. S. C. Ord. XII. 15; (3) where, in an action for the recovery of land, a person not named as defendant in the writ of summons obtains leave of the Court or Judge to appear and defend, and enters an appearance accordingly, in which case he must forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff himself (if he sues in person); R. S. C. Ord. XII. 20. For form of notice in the third case, see *post* No. 313.

(*f*) At any time before judgment the defendant may appear without leave; R. S. C. Ord. XII. 15. After judgment an appearance cannot be entered by a defendant except by leave of the Court, which will only be granted on the defendant submitting to be bound by the judgment and proceedings already had. The form of the order made on an application under R. S. C. Ord. XV. seems to render the hearing of such application equivalent to the trial of the action (see the form in Seton, ed. 4, p. 8); and it is apprehended that after an order made for an account upon such an application, no appearance can be entered without leave. The application for leave to appear is by petition of course, if the plaintiff will consent; by motion or summons on notice, if the plaintiff will not consent; Dan. Pr. 139, 463. On leave being given, the appearance is entered in the ordinary way (see p. 146, note (*b*)), upon production of the order giving leave to the officer with whom the appearance is entered; Dan. Pr. 140. Notice of the appearance must on the same day be given to the plaintiff's solicitor, or to the plaintiff himself (if he sues in person); R. S. C. Ord. XII. 15. For form of notice, see No. 299 *post*. A copy of the order when entered should be served on the solicitors of the other defendants, and also on the plaintiff's solicitor when it is made on petition; Dan. Pr. 139, 140. Thereafter the action proceeds against the defendant in the ordinary manner; Dan. Pr. 140.

296. Petition of course, for leave to appear (*g*).

Formal parts : see post No. 1576.

The humble petition of the defendant A. B.

Showeth as follows :

1. The plaintiff on the —— day of ——, 187—, issued his writ of summons in this action against your petitioner, who has never appeared thereto.

2. Judgment was given on the trial of this action on the —— day of ——, 187— (*h*), and thereby certain accounts and enquiries were directed to be taken and made ; but the Chief Clerk has not yet made his certificate of the result thereof [*or as may be*].

3. Your petitioner is now desirous to attend the proceedings under the said judgment.

4. Your petitioner submits to be bound by the said judgment and by all proceedings had in this action.

Your petitioner therefore humbly prays that he may be at liberty to enter an appearance to the writ of summons in this action ; and that he may have the like benefit of the said judgment, and be at liberty to attend all subsequent proceedings in this action as if he had appeared at the trial thereof.

And your petitioner will ever pray, &c.

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297. Notice of motion, or summons, for like (*j*).

Formal parts : see post No. 1571 *or* 881.

on the part of the defendant A. B., that upon the said defendant submitting to be bound by the judgment given on the trial of this action on the —— day of ——, 187—, and by all proceedings had in this action, he may be at liberty [*Continue as in prayer of* No. 296 *ante, to end*].

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298. Memorandum of appearance.

Formal parts : see ante No. 294.

Enter an appearance for the defendant A. B. in this action, pursuant to order, dated the —— day of ——, 187— [*Continue as in* No. 294 *ante, to end*].

(*g*) The order can only be obtained on petition of course, where the plaintiff's solicitor consents to the order ; Dan. Pr. 139, 463. For form of consent (to be written at the foot of the petition), see *post* No. 1577.

(*h*) As to the case where an order for an account has been obtained on an application under R. S. C. Ord. XV., see p. 148, note (*f*).

(*j*) The application must be made by motion or summons on notice, where the plaintiff will not consent to the order ; Dan. Pr. 139, 463.

299.

Notice of appearance (*jj*).

Formal parts : see ante No. 21.

Take notice that pursuant to the leave given by the order made in this action, dated the —— day of ——, 187—, I have [*Continue as in* No. 295 *ante, to end*].

(3.) *Conditional Appearance* (*k*).

300.

Motion paper, for leave to enter conditional appearance.

Formal parts : see post No. 1570.

To move on behalf of the defendant A. B., who has been served with the writ of summons in this action, and intends to apply to set aside such writ [*Or*, to discharge such service ; *or as may be*], that he may be at liberty to enter a conditional appearance with the Registrar upon the usual submission.

301.

Petition of course, for the like.

Formal parts : see post No. 1576.

The humble petition of the defendant A. B.

Showeth as follows :

1. Your petitioner has been served with the writ of summons in this action.

2. Your petitioner is advised that he is entitled to have such writ of summons set aside [*Or*, to have such service discharged ; *or as may be*], and is desirous of entering an appearance with the Registrar preparatory to an application to this honourable Court

(*jj*) See R. S. C. Ord. XII. 15 ; note (*e*) to form No. 295 *ante*.

(*k*) A conditional appearance may still be entered for a defendant ; compare the case of *The Vivar*, 2 P. D. 29. Such an appearance is entered in those cases where the defendant desires to apply to set aside the writ of summons, or to take some other objection to the regularity of the proceeding by which the plaintiff has sought to compel his appearance ; Dan. Pr. 459 ; for an irregular proceeding cannot be treated as void : the proper course is to apply to set it aside ; R. S. C. Ord. LIX. By entering an ordinary appearance with the Record and Writ Clerk or the district registrar, any such objection would be waived ; *Oulton* v. *Radcliffe*, L. R. 9 C. P. 189 ; *Preston* v. *Lamont*, 1 Ex. D. 362 ; Dan. Pr. 459. For the purpose of entering a conditional appearance with the Registrar, an order must be obtained giving leave to do so ; this order may be obtained *ex parte* on motion or petition of course, and the defendant must consent to submit to any process which may be issued against him on such appearance ; Dan. Pr. 460.

for setting aside such writ [*Or*, for discharging such service ; *or as may be*].

Your petitioner therefore humbly prays that he may be at liberty to enter a conditional appearance with the Registrar upon the usual submission.

And your petitioner will ever pray, &c.

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302. Memorandum of entry of conditional appearance (*kk*).

—— day of ——, 187— [*Date of entering appearance*]. 187—. D. No. .

C. D. *v.* A. B.

The defendant A. B. has this day entered his conditional appearance by Mr. X. Y., of [*place of business*], his solicitor.

X. Y.,
Solicitor for the said defendant.

(4.) *Appearance in Action for the Recovery of Land.*

303. Memorandum of appearance (as landlord) and statement limiting defence to part of property mentioned in writ (*l*).

187—. No. .

High Court of Justice,
Chancery Division.
[*Name of Judge.*]

A. B. *v.* C. D. and others.

Enter an appearance for the defendant C. D. (as landlord (*m*)) in this action [*Continue as in* No. 294 *ante, to end; and, if the defendant limits his defence to part only of the property mentioned in the writ, add the following :*]

The said defendant limits his defence to part only of the property mentioned in the writ of summons in this action, that is to say, to the close called "the Big field" (*l*).

[*Or,*

(*kk*) The memorandum is written in the Registrar's book of decrees and orders by the clerk at the entering seat, on production of the order giving leave to enter a conditional appearance, and the entry is signed by the defendant's solicitor ; Dan. Pr. 460.

(*l*) Any person appearing to a writ of summons for the recovery of land, may limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed by him or his solicitor, and served within four days after appearance ; and an appearance where the defence is not so limited will be deemed an appearance to defend for the whole ; R. S. C. Ord. XII. 21 ; as to the contents of the memorandum and the mode in which the appearance is entered, see p. 146, note (*b*).

(*m*) A person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, must state in his appearance that he appears as landlord ; R. S. C. Ord. XII. 19.

[*Or*, The said defendant limits his defence to part only of the property mentioned in the writ of summons in this action, that is to say, to one undivided moiety or half part thereof [*or as may be*], admitting the right of the plaintiff, as joint tenant [*Or*, tenant in common ; *Or*, co-parcener] with the said defendant of the property mentioned in the said writ of summons, to the other undivided moiety or half part thereof [*or as may be*]] (*l*).

The said defendant requires [*Or*, does not require] a statement of claim to be filed and delivered.

304.

Notice of appearance.

[*See ante* No. 295.]

305.

Notice limiting defence to part of property mentioned in writ (*n*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . . Defendants.

The defendant C. D. limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the close called "the Big field."

[*Or*, The defendant C. D. limits his defence to part only of the property mentioned in the writ of summons in this action, that is to say, to one undivided moiety or half part thereof [*or as may be*], admitting the right of the plaintiff, as joint tenant [*Or*, as tenant in common ; *Or*, as co-parcener] with the said defendant of the said property mentioned in the said writ of summons, to the other undivided moiety or half part thereof [*or as may be*]].

[*Conclude as in* No. 21 *ante*].

306.

Summons for further time to deliver notice limiting defence (*o*).

Formal parts : see post No. 881.

on the part of the defendant C. D., that the time limited by the Rules of the Supreme Court, Ord. XII., 21, for the said defendant to serve a notice limiting his defence to part only of the property

(*l*) See note (*l*) *supra*.

(*n*) See R. S. C. Ord. XII. 21, and note (*l*) to No. 303. The notice must be served within four days after appearance. For form, see R. S. C. Ord. XII. 22, and App. (A), Pt. I. No. 7.

(*o*) A Court or Judge has power to enlarge or abridge the time appointed by

mentioned in the writ of summons in this action, may be enlarged to the —— day of ——, 187— ; and that the costs of this application may be costs in the action.

307. Summons for leave to deliver notice, notwithstanding expiration of time limited (*o*).

Formal parts : see post No. 881.

on the part of the defendant C. D., that notwithstanding the expiration of the time limited by the rules of the Supreme Court, Ord. XII., 21,

[*If so :*] and by the order made in this action, dated the —— day of ——, 187— [*Order enlarging time*],

the said defendant may be at liberty to serve a notice limiting his defence to part only of the property mentioned in the writ of summons in this action ; and that the costs of this application may be costs in the action.

308. Notice of motion, or summons, for further and better particulars of the property to which defence limited (*oo*).

Formal parts : see post No. 1571 *or* 881.

on the part of the plaintiff, that the defendant C. D. may be ordered, within —— days, to deliver to the plaintiff's solicitor a statement in writing, containing further and better particulars of the property to which the said defendant C. D. limits his defence to this action ; and that in default of such statement being so delivered, the appearance entered for the said defendant to the writ of summons in this action, may be deemed an appearance to defend for the whole of the property mentioned in the said writ.

309. Motion paper, for leave for person not named as defendant to appear and defend (*p*).

Formal parts : see post No. 1570.

To move on behalf of A. B., that he may be at liberty to appear to the writ of summons in this action [*If so :* as landlord of the above-named defendant C. D.], and to defend the said action [*If*

the rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed ; R. S. C. Ord. LVII. 6.

(*o*) See note (*o*) to No. 306 *ante*.

(*oo*) The memorandum of appearance or notice should describe the part of the property to which the defence is limited "with reasonable certainty ;" R. S. C. Ord. XII. 21.

(*p*) Any person not named as a defendant in a writ of summons for the recovery of land, may, by leave of the Court or Judge, appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant ; R. S. C. Ord. XII. 18. The application for leave is *ex parte*, unless judgment has been signed in the action against the defendant named in the writ ; it must then be by motion or summons on notice ; Chitty's Forms, 555, note (*b*). Where leave is given, the appearance is entered in the ordinary manner, and notice given to the plaintiff's solicitor ; R. S. C. Ord. XII. 20 ; and see *post* Nos. 312 to 314.

the applicant desires to limit his defence to a part only of the property mentioned in the writ, add:] for [*Here describe the part to which it is desired to limit the defence*] being a part of the property mentioned in the said writ of summons.

310.

Notice of motion or summons, for like (*p*).

Formal parts: see post No. 1571 *or* 881.

on the part of A. B., that the judgment entered in this action for the above-named plaintiff may be set aside, and that the applicant may be at liberty [*Continue as in last form*].

311.

Affidavit in support.

Formal parts: see post No. 693.

1. This action is brought to recover possession of [*Here describe the premises as in the endorsement of claim on the writ of summons*].

2. I am in possession of the said premises [*Or*, of ——, being a part of the said premises] by myself [*Or*, by the above-named defendant C. D. as my tenant].

[*If judgment has been signed against the person named as defendant in the writ of summons, add:*]

3. On the —— day of ——, 187—, judgment was entered in this action for the above-named plaintiff. I was not aware that this action had been brought for the recovery of the said premises of which I am so in possession as aforesaid, until the —— day of ——, 187— [*Or, state other circumstances explaining or excusing the delay in making the application*].

312.

Memorandum of appearance (*q*).

Formal parts: *see ante* No. 294.

Enter an appearance for A. B. [*If so:* as landlord (*r*)] in this action, pursuant to order dated —— day of——, 187— [*Continue as in* No. 294 *ante, to end*].

(*p*) See note (*p*) to No. 309 *ante*.

(*q*) Where a person not named as defendant in a writ of summons for the recovery of land has obtained leave of the Court or Judge to appear and defend, he must enter an appearance in the ordinary manner, intituled in the action against the party or parties named in the writ as defendant or defendants, and must forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and he will in all subsequent proceedings be named as a party defendant to the action; R. S. C. Ord. XII. 20.

(*r*) See R. S. C. Ord. XII. 19.

313.
Notice of appearance (*s*).

Formal parts: see ante No. 21.

Take notice that pursuant to leave given by an order made in this action, dated the —— day of ——, 187—, I have this day entered an appearance for A. B. [*If so:* as landlord] to the writ of summons in the above action, at the London office [*Or*, at the District Registry at ——].

314.
Notice limiting defence to part.

[*See* No. 305 *ante.*]

SECTION II.—SETTING ASIDE THE WRIT OF SUMMONS OR SERVICE THEREOF (*a*).

315.
Notice of motion, to set aside writ of summons (*aa*).

Formal parts: see post No. 1571.

on the part of the defendant A. B., that the writ of summons in this action and all subsequent proceedings therein, and also the conditional appearance to the said writ of summons entered by the said defendant with the Registrar (*b*), may be set aside

[*If there are other defendants than the applicant, add:*] as against the said defendant A. B.,

on the ground that [*Here specify the irregularity on the ground whereof it is sought to set the writ aside, as thus:*]

the said writ of summons was issued for service out of the jurisdiction of the Court, without the leave of the Court or a Judge (*c*); *Or*,

the said writ of summons has no statement endorsed thereon of the nature of the claim made or of the relief or remedy required in the action (*d*); *Or*,

the said writ of summons has no statement endorsed there-

(*s*) See R. S. C. Ord. XII. 20, and note (*q*) to No. 312.

(*a*) Non-compliance with the rules of Court does not render the proceedings in the action void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or may be amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit; R. S. C. Ord. LIX. Before making the application to set aside the writ, a conditional appearance must be entered with the Registrar. As to the mode of entering a conditional appearance, see *ante* Nos. 300 to 302, and notes. An ordinary appearance entered with the Record and Writ Clerk waives the irregularity; Dan. Pr. 459, note (*b*). The application should be made immediately after entering the appearance and before taking any other step.

(*aa*) For form of affidavit in support, see *post* No. 317.

(*b*) See Dan. Pr. 460, and note (*m*).

(*c*) See R. S. C. Ord. II. 4.

(*d*) See R. S. C. Ord. II. 1; *Ibid.*, Ord. III. 1.

on of the amount claimed by the plaintiff for debt and costs (*e*) ; *Or*,

the said writ of summons has no address for service endorsed thereon (*f*) ; *Or*,

the address for service endorsed on the said writ of summons is illusory and fictitious (*g*) ; *Or*,

the said writ of summons is issued under the "Summary Procedure on Bills of Exchange Act, 1855," upon a bill of exchange [*Or*, promissory note] which had become due and payable more than six months before the commencement of the action (*h*) ;

and that the plaintiff may be ordered to pay to the said defendant A. B. his costs of entering a conditional appearance to the said writ, and of this application, such costs to be taxed.

316.

Notice of motion to set aside concurrent writ of summons (*j*).

Formal parts : see post No. 1571.

on the part of the defendant A. B., that the concurrent writ of summons issued in this action on the —— day of ——, 187—, and all subsequent proceedings therein, and also the conditional appearance to the said concurrent writ of summons entered by the said defendant with the Registrar (*k*) may be set aside

[*If there are other defendants than the applicant, add :*] as against the said defendant A. B.,

on the ground that [*Here specify the irregularity on the ground whereof it is sought to set the writ aside, as thus :*]

the said concurrent writ of summons was issued more than twelve months after the issuing of the original writ of summons in this action (*l*) ;

and that the plaintiff may be ordered to pay to the said defendant A. B. his costs of entering a conditional appearance to the said writ, and of this application, such costs to be taxed.

317.

Affidavit in support of motion to set aside writ of summons.

Formal parts : see post No. 693.

1. On the —— day of ——, 187—, I was served with the paper writing now produced and shown to me, and marked A. (*n*), and which purports to be a copy of a (concurrent) writ of summons issued out of the Chancery Division of this honourable Court on the —— day of ——, 187—.

(*e*) See R. S. C. Ord. III. 7.

(*f*) See R. S. C. Ord. IV., and R. S. C. Feb., 1876, rule 3.

(*g*) See R. S. C. Ord. IV., and R. S. C. Feb. 1876, rule 3 ; compare R. S. C. Ord. XII. 9.

(*h*) 18 & 19 Vict. c. 67, s. 1 ; *Maltby* v. *Murrell*, 5 H. & N. 813.

(*j*) For form of affidavit in support, see *post* No. 317.

(*k*) See Dan. Pr. 460, and note (*m*).

(*l*) R. S. C. Ord. VI. 1.

(*n*) For form of memorandum of exhibit, see *post* No. 723.

2. On the —— day of ——, 187—, a conditional appearance to the said (concurrent) writ of summons was duly entered on my behalf with the Registrars of the Chancery Division of this honourable Court.

3. [*Verify the facts relied on as a ground for setting aside the writ.*]

4. [*Show means of knowledge.*]

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318. Notice of motion to set aside service of writ of summons (*o*).

Formal parts : see post No. 1571.

on the part of the defendant A. B., that the service of the writ of summons in this action on the said defendant [*Or*, the notice in lieu of service of the writ of summons in this action given to the said defendant]

[*If the service was effected out of the jurisdiction, add :*] at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court

and all subsequent proceedings in this action, and also the conditional appearance to the said writ of summons entered by the said defendant with the Registrar (*p*), may be set aside,

[*If there are other defendants than the applicant, add :*] as against the defendant C. D.

on the ground that [*Here specify the irregularity on the ground whereof it is sought to set the service aside ; as thus :*]

the said writ of summons was served after the expiration of twelve months from the day of the date of the issue thereof, and without having been duly renewed (*q*) ; *Or*,

the said concurrent writ of summons was served after the expiration of twelve months from the day of the date of the issuing of the original writ of summons in this action, and without having been duly renewed (*r*) ; *Or*,

such service was effected [*Or*, such notice was given] out of the jurisdiction of the Court, and without the leave of the Court or a Judge (*s*) ;

And that the plaintiff may be ordered to pay to the said defendant A. B. his costs of entering a conditional appearance to the said writ and of this application, such costs to be taxed.

(*o*) For form of affidavit in support, see *ante* No. 317, and *post* No. 321.

(*p*) See Dan. Pr. 460, and note (*m*).

(*q*) See R. S. C. Ord. VIII. 1 ; *Hemp* v. *Warren*, 2 Dowl. N. S. 758.

(*r*) See R. S. C. Ord. VI. 1 ; *Ibid.*, Ord. VIII. 1 ; *Hemp* v. *Warren*, 2 Dowl. N. S. 758.

(*s*) See R. S. C. Ord. XI. ; R. S. C. June, 1876, rule 5.

319. Notice of motion to discharge order for service out of the jurisdiction, and to set aside service (*t*).

Formal parts: see post No. 1571.

on the part of the defendant A. B., that the order, dated the —— day of ——, 187—, made in this action, whereby liberty was given to serve the writ of summons in this action on the said defendant [*Or*, to give notice in lieu of service of the writ of summons in this action to the said defendant] at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court, may be discharged; and that the service of the said writ on the said defendant [*Or*, the notice in lieu of service of the said writ given to the said defendant], and all subsequent proceedings in this action; and also the conditional appearance to the said writ of summons entered by the said defendant with the Registrar (*u*), may be set aside

[*If there are other defendants than the applicant, add:*] as against the said defendant A. B.,

on the ground that

the land [*Or*, stock; *or other property, describing it*] which is the subject-matter of this action is not, nor is any part thereof, situate within the jurisdiction of this honourable Court; *Or*,

the land [*Or*, stock; *or as may be*] affected by the deed [*Or*, will; *or as may be*], which is the subject-matter of this action, is not, nor is any part thereof, situate within the jurisdiction of this honourable Court; *Or*,

the contract which is sought to be enforced [*Or*, rescinded; *Or*, dissolved; *Or*, annulled; *Or*, for the breach whereof damages or other relief are or is demanded; *or as may be*] in this action, was not made or entered into, nor has there been any breach thereof, within the jurisdiction of this honourable Court; *Or*,

the act [*Or*, thing] in respect whereof damages are sought to be recovered in this action, was not done within the jurisdiction of this honourable Court; *Or*,

the application for the said order was not supported by the evidence required by the rules of the Supreme Court, Ord. XI., rules 1*a* and 3 (*v*);

(*t*) See R. S. C. Ord. XI., and R. S. C. June, 1876, rule 5; *Great Australian Gold Mining Co.* v. *Martin*, 5 Ch. D. 1. A defendant who alleges that leave to serve a writ out of the jurisdiction was wrongly given, should apply to set aside the order giving leave; *Preston* v. *Lamont*, 1 Ex. D. 361: see *Great Australian Gold Mining Co.* v. *Martin*, *ubi sup.* The objection cannot be taken in the statement of defence; *Preston* v. *Lamont*, *ubi sup.* The application should be made promptly; *Ibid.*, at p. 362. For form of affidavit in support of the application, see *post* No. 321.

(*u*) See Dan. Pr. 460, and note (*m*).

(*v*) See note (*t*), *supra*, and *Great Australian Gold Mining Co.* v. *Martin*, 5 Ch. D. 1.

And that the plaintiff may be ordered to pay to the said defendant A. B. his costs of entering a conditional appearance to the said writ, and of this application, such costs to be taxed.

320.

Notice of motion to discharge order for service of writ of summons on a foreigner out of the jurisdiction, and to set aside service (*w*).

Formal parts: see post No. 1571.

on the part of the defendant A. B., that the order dated the —— day of ——, 187—, made in this action, whereby liberty was given to serve the writ of summons in this action on the said defendant at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court, may be discharged; and that the service of the said writ on the said defendant and all subsequent proceedings in this action; and also the conditional appearance to the said writ of summons entered by the said defendant with the Registrar (*x*), may be set aside

[*If there are other defendants than the applicant, add:*] as against the said defendant A. B.,

on the ground that the said defendant is a foreigner, resident at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court. And that the plaintiff may be ordered to pay to the said defendant A. B. his costs of entering a conditional appearance to the said writ and of this application, such costs to be taxed.

321.

Affidavit in support of motion to set aside service of writ out of jurisdiction.

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, I [*Or*, the above-named defendant A. B.] was served at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court with the paper writing now produced and shown to me, and marked A. (*y*), and which purports to be a copy of [*Or*, a notice in lieu of service of] a writ of summons issued out of the Chancery Division of this honourable Court on the —— day of ——, 187—.

2. On the —— day of ——, 187—, a conditional appearance to the said writ of summons was duly entered on my behalf [*Or*, on behalf of the said defendant A. B.], with the Registrars of the Chancery Division of this honourable Court.

3. [*Verify the facts relied on as a ground for setting aside the service of the writ.*]

4. [*Show means of knowledge.*]

(*w*) It is irregular to serve a writ of summons on a foreigner resident out of the jurisdiction; all that can be done is to give him notice of the writ; *Westman* v. *Aktiebolaget Snickarefabrik*, 1 Ex. D. 237; *Beddington* v. *Beddington*, 1 Prob. D. 426. An order giving leave to serve a writ of summons on a foreigner out of the jurisdiction, and service of the writ under such order were set aside; *Westman* v. *Aktiebolaget Snickarefabrik*, *ubi sup.* The objection must be taken by an application to set aside the order and service; see *Preston* v. *Lamont*, 1 Ex. D. 361. For form of affidavit in support of the application, see No. 321 *post.*

(*x*) See Dan. Pr. 460, and note (*m*).

(*y*) For form of memorandum of exhibit, see *post* No. 723.

Section III.—Interpleader (*a*).

(*a*) By the rules of the Supreme Court, Ord. I. 2, it is provided with respect to interpleader, that the procedure and practice used by Courts of Common Law under the Interpleader Acts, 1 & 2 Wm. IV. c. 58, and 23 & 24 Vict. c. 126, shall apply to all actions and all the divisions of the High Court of Justice, and that the application by a defendant shall be made at any time after being served with the writ of summons and before delivering his defence. By the Statute 1 & 2 Wm. IV. c. 58, it is provided (s. 1) that upon application by or on behalf of any defendant by affidavit or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed by or supposed to belong to some third person who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject-matter of the action in such manner as the Court or any Judge thereof may order or direct, the Court or a Judge may make orders calling upon such third party to appear, and to state the nature and particulars of his claim, and to maintain or relinquish his claim, and may hear the allegations as well of such third party as of the plaintiff, and in the meantime may stay the proceedings in such action, and finally may order the third party to make himself defendant in the same or some other action, or to proceed to trial on one or more issue or issues, and may also direct which of the parties shall be plaintiff or defendant in such trial, or with the consent of the plaintiff and such third party, their counsel or attorneys, the Court or Judge may dispose of the merits of their claims, and determine the same in a summary manner, and the Court or Judge may make such other orders therein as to costs, and all other matters, as may appear to be just and reasonable. By s. 3, if the third party upon being duly served with the order to appear does not appear, or neglects or refuses to comply with any order made after appearance, the Court or Judge may declare such third party to be for ever barred from prosecuting his claim against the original defendant, saving his right or claim against the plaintiff. By the Common Law Procedure Act, 1860, 23 & 24 Vict. c. 126, s. 12, the jurisdiction conferred by the above-mentioned Act of Wm. IV. may be exercised though the titles of the claimants to the property in question have not a common origin, but are adverse to and independent of each other; by s. 14 the Court or Judge may, upon the order to appear, wherever from the smallness of the amount in dispute, or of the value of the goods, it appears desirable and right so to do, at the request of either party, dispose of the merits of the respective claims of the parties, and determine the same in a summary manner; by s. 15, where the question is one of law, and the facts are not in dispute, the Judge may decide the question without directing an action or issue, or he may order a special case to be stated for the opinion of the Court. By s. 17, the judgment in any action or issue directed in any interpleader proceedings, and the decision of the Court or a Judge in a summary manner are made final and conclusive; and this is not altered by ss. 19, 50 of the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66); *Dodds* v. *Shepherd*, 1 Exch. D. 75; but see *Witt* v. *Parker*, 25 W. R. 518. An interpleader order may be made, although one of the rival claimants claims something in addition to the common claim which both make against the applicant; *Attenborough* v. *London and St. Katharine Docks Co.*, 26 W. R. 583. The costs of the interpleader form the first charge upon the property in dispute; *Attenborough* v. *London and St. Katharine Docks Co.*, 26 W. R. 583.

322.
Interpleader summons (*b*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Let the above-named plaintiff, his solicitor or agent, and also Mr. E. F., of [*residence and addition*], attend at my chambers, situate at [*State where*], on ——, the —— day of ——, 187—, at —— of the clock in the ——noon, on the hearing of an application on the part of the defendant, that the said E. F. may be ordered to state to the Judge the nature and particulars of his claim to [*Here describe the property or thing the right to which is in question*], the subject-matter of this action, and either to maintain or to relinquish his said claim; and that the costs of the said defendant C. D. of this action, including the costs of this application, may be taxed. And that the said defendant C. D. may be at liberty out of the sum of £—— in his hands, the subject-matter of this action, to retain the amount of the said costs when taxed and certified, without prejudice to the question by whom the same costs are to be ultimately borne. And that the said defendant C. D. may be at liberty to pay the residue of the said sum of £——, after retaining thereout the amount of the said costs when so taxed and certified into Court to the credit of this action, B. *v.* D., 187—, B. No. —. And that upon such payment into Court being made as aforesaid, all further proceedings in this action may be stayed as against the said defendant C. D. And that such further order may be made for the purpose of determining the rights of the plaintiff and of the said E. F. in the residue of the said sum of £——, the subject-matter of this action, as may appear to be just and reasonable.

323.
Another form of interpleader summons (*c*).

[*Proceed as in* No. 322 *ante, down to* "may be taxed"; *and continue thus:*] And that the plaintiff may be ordered to pay to the said defendant C. D. the amount of the said costs when so taxed without prejudice to the question by whom the same are to be ultimately borne. And that upon such payment being made the said defendant C. D. may be at liberty

(*b*) The application must be after service of the writ, and before delivery of the statement of defence; R. S. C. Ord. I. 2. It must be supported by an affidavit, as to the contents whereof, see 1 & 2 Wm. IV. c. 58, s. 1; *ante*, p. 160, note (*a*). For form, see *post* No. 325. For forms of order, see *Harper* v. *Royal Insurance Co.*, M. R., at Chambers, May 23, 1876; Pemberton on Judgments, 2nd ed. 89; *Buckmaster* v. *Lockhart*, M. R., at Chambers, 26 May, 1876, Reg. Lib. A. 1633; Seton, ed. 4, 358.

(*c*) See note (*b*) to No. 322 *ante*.

to transfer the £100 consolidated £3 per cent. annuities standing in his name in the books of the Bank, and being the subject-matter of this action, into Court to the credit of this action, B. *v.* D., 187—, B. —, and to receive any dividends on the said annuities now due, or to become payable to him before or after such transfer, and to pay such dividends into Court to the same credit; *Or*,

to deposit in Court to the credit of this action, B. *v.* D., 187—, B. —, the Exchequer bills [*Or*, the twenty Chilian 5 per cent. 1871 bonds; *or as may be*] specified in the schedule hereto, and being the subject-matter of this action; *Or*,

to deposit in Court to the credit of this action, B. *v.* D., 187—, B. —, the ten bonds of the —— Gas Company specified in the schedule hereto, and being the subject-matter of this action, and to execute and procure to be registered a transfer of such securities to the Chancery Pay Office account; *Or*,

to place in a box in the presence of the solicitors for the plaintiff and for the said E. F., the claimant, the several articles of plate [*Or*, jewellery; *Or*, the several deeds and documents of title] specified in the schedule hereto, and being the subject-matter of this action, and to deposit such box in Court to the credit of this action, B. *v.* D., 187—, B. —;

And that upon such transfer and payment into Court [*Or*, such deposit in Court] being made as aforesaid all further proceedings in this action [*Continue as in* No. 322 *ante, substituting a brief description of the property in question for the words* "the said sum of £——"].

324.

Another form of interpleader summons (*d*).

[*Proceed as in* No. 322 *ante, down to* "may be taxed"; *and continue thus:*] And that the plaintiff may be ordered to pay to the said defendant C. D. the amount of the said costs when so taxed without prejudice to the question by whom the same are to be ultimately borne. And that all further proceedings in this action may be stayed as against the said defendant C. D., except in the event of a breach of his undertaking hereinafter mentioned. And that the said defendant C. D. may retain possession of the [*Here describe briefly the property the right to which is in question; it may be conveniently done by reference to a schedule*], the subject-matter of this action, until further order upon his undertaking to deal with the same as this Court shall direct. And that such further order may be made for the purpose of determining the rights of the said plaintiff and of the said E. F. in the said ——, the subject-matter of this action, as may appear to be just and reasonable.

(*d*) See note (*b*) to No. 322 *ante*.

325.
Affidavit in support (*e*).

Formal parts; see post No. 693.

1. The writ of summons in this action was issued on the —— day of ——, 187—, and was served upon me on the —— day of ——, 187—. I have not yet delivered a defence in this action.

2. This action is brought for [*Here state the nature of the plaintiff's claim, and describe the property or thing to which the right is in dispute*].

3. I do not claim any interest in the said ——, the subject-matter of this action.

4. [*Show that the right to the thing in dispute is claimed by, or that there is good reason to suppose that it belongs to, the third party (describing him), and that such third party has sued or that there is good reason to expect that he will sue for the same.*]

5. I do not in any manner collude with the said [*the claimant*], but am ready to bring into Court or to pay or dispose of the said ——, the subject-matter of this action, in such manner as this honourable Court or any Judge thereof may order or direct.

Section IV.—Removal of the Action from a District Registry to London.

326.
Notice to remove action from District Registry to London (*f*).

Formal parts : *see ante* No. 21.

Take notice that the defendant C. D. desires this action to be removed from the District Registry at —— to the London Office of the High Court of Justice.

(*e*) As to the contents of this affidavit, see 1 & 2 Wm. IV. c. 58, s. 1 : and *ante*, p. 160, note (*a*).

(*f*) Where an action is commenced in a district registry, and the sole defendant, or all the defendants, or all the defendants who appear, appear in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following : (1) Where the writ is specially indorsed under Ord. III. 6, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Ord. XIV. ; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so ; (2) Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Ord. XIV. ; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so ; (3) Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appear-

Section V.—Payment of Money into Court in Satisfaction (*a*).

327.

Request for directions to Bank of England to receive money to be paid into Court (*b*).

Chancery.

To the Paymaster-General.

A direction is requested to enable C. D., of [*residence*], to pay into Court the sum of [*State the amount desired to be paid in*] to the credit of B. *v.* D., 1877, B. 7 (*c*), pursuant to rule 25 of the

ance, and before delivering a defence, and before the expiration of the time for doing so; R. S. C. Ord. XXXV. 11. A defendant who desires to remove an action under this rule must serve upon the other parties to the action, and deliver to the district registrar a notice signed by himself or his solicitor to the effect that he desires the action to be removed to London, and thereupon the action will be removed accordingly, and the district registrar will transmit to the proper officer in London of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action; *Ibid.*, rules 12, 14.

(*a*) Where an action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a Judge at a later time, pay into Court a sum of money by way of satisfaction or amends; R. S. C. Ord. XXX. 1. Payment into Court must be pleaded in the defence, and the claim or cause of action in respect of which such payment is made must be specified therein; *Ibid.*, Ord. XXX. 1. The sum paid in must be paid to the proper officer, who will give a receipt for the same. If such payment be made before delivering his defence, the defendant must thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim; *Ibid.*, Ord. XXX. 2. A defendant may not pay money into Court in respect of matters in respect whereof he denies the plaintiff's right of action; *Spurr* v. *Hall*, 2 Q. B. D. 615; *Berdan* v. *Greenwood*, W. N. (1878) 104.

(*b*) Money can only be paid into Court in London. A district registrar cannot receive money into Court; *Re Smith*, *Hutchinson* v. *Ward*, 6 Ch. D. 692; *McDonald* v. *Foster*, 25 W. R. 602. The form of request may be obtained at the Chancery Pay Office; the reference to the record must be authenticated by the seal of the Record and Writ Clerk (Chancery Funds Cons. Rules, 1874, rule 26). The request is then left at the Chancery Pay Office, and the directions to the chief accountant of the Bank of England to receive the money will be ready after a lapse of two or three clear days. The directions and the money must then be taken to the Bank of England, and the money paid in. The cashier at the bank who receives the money will give a receipt therefor, but the receipt of the proper officer referred to in R. S. C. Ord. XXX. 2 (*supra*, note (*a*)), is probably the certificate of the Chancery Paymaster, of which an office copy may be obtained.

(*c*) The reference to the record must be authenticated by the seal of the Record and Writ Clerk; Chancery Funds Cons. Rules, 1874, rule 26.

Chancery Funds Consolidated Rules, 1874. Such money not having been directed to be paid into Court by any judgment or order; and not being money to be paid into Court in pursuance of any act of Parliament or general order, by which some particular authority is required to enable the payment to be made.

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party; see* No. 92 *ante.*]

328.

Notice of payment into Court (*d*).

Formal parts: see ante No. 21.

Take notice that the defendant has paid into Court £——, and says that that sum is enough to satisfy the plaintiff's claim [*Or*, the plaintiff's claim for [*here specify the claim or cause of action in respect of which the payment is made*]].

Section VI.—Obtaining Disclosure from the Plaintiff and his Solicitor.

329.

Demand, in writing, to know whether writ issued by, or with authority or privity of, solicitor whose name indorsed thereon (*a*).

Formal parts: see ante No. 21.

Take notice that you are hereby required by [*Or*, on behalf of] the defendant C. D. to declare forthwith, pursuant to the Rules of the Supreme Court, Order VII., r. 1, whether the writ of summons issued in this action out of the Chancery Division of the High Court of Justice on the —— day of ——, 187—, and served on the above-named defendant C. D. on the —— day of —— 187—, and whereon is indorsed a statement that the same was issued by you, was so issued by you or with your authority or privity.

(*d*) See R. S. C. Ord. XXX. 2, and App. (B), form 5.

(*a*) Every solicitor whose name is indorsed on any writ of summons must on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same are thereupon *ipso facto* stayed, and no further proceedings may be taken thereupon without leave of the Court or a Judge; R. S. C. Ord. VII. 1.

MIDDLE TEMPLE

330.
Declaration in reply thereto (*a*).

Formal parts: see ante No. 21.

Take notice that the writ of summons in this action mentioned or referred to in your notice dated the —— day of ——, 187—, was [*Or*, was not] issued by me or with my authority or privity.

331.
Notice of motion, or summons, to stay proceedings until reply.

Formal parts: see post No. 1571 or 881.

on the part of the defendant [*Or*, of the defendant C. D.], that all proceedings upon the writ of summons in this action may be stayed [*If there are other defendants than the applicant, add:*] as against the said defendant C. D.

until E. F., whose name is indorsed on the said writ of summons as that of the solicitor issuing the same, shall have declared to the said defendant whether the said writ of summons was so issued by him or with his authority or privity; and that the plaintiff A. B. may be ordered to pay to the applicant the costs of this application to be taxed.

332.
Affidavit in support.

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, I [*Or*, the above-named defendant C. D.] was served with the paper writing now produced and shown to me, and marked A. (*b*), and which purports to be a copy of a writ of summons and of the indorsements thereon issued out of the Chancery Division of this honourable Court on the —— day of ——, 187—.

2. On the —— day of ——, 187—, I served Mr. E. F., whose name is indorsed on the said paper writing as that of the solicitor issuing the said writ of summons, with a demand in writing by [*Or*, on behalf of] the defendant C. D., requiring the said Mr. E. F. to declare forthwith whether such writ was issued by him or with his authority or privity, by delivering the said demand to the said Mr. E. F. personally [*Or*, by leaving the said demand with a clerk or servant of the said Mr. E. F. at ——, the address for service indorsed on the said writ].

3. The said Mr. E. F. has not declared whether the said writ was issued by him or with his authority or privity.

4. [*Show means of knowledge.*]

333.
Application for names and places of residence of persons suing as co-partners in the name of their firm.

[*The same as* Nos. 191 *to* 196 *ante.*]

(*a*) See note (*a*) to No. 329 *ante*.

(*b*) For form of memorandum of exhibit, see *post* No. 723.

Section VII.—Proceedings by a Defendant for the purpose of binding by the Judgment in the Action a Person against whom he has a claim over for Remedy or Relief (*a*).

(*a*) By the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 24, subs. 3, it is provided that the High Court of Justice and the Court of Appeal shall have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief relating to or connected with the original subject of the cause or matter as such defendant shall have properly claimed by his pleading against any person other than the plaintiff, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, and as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and that every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant. The Committee of Judges appointed to draw up the Rules of Practice considered this enactment, and came to the conclusion that they had power to make rules which would enable a defendant to obtain relief against a co-defendant, or against a person not a party to the action, in the pending action, and without bringing an independent action, but that it was not advisable to do so as it would so embarrass plaintiffs as to create injustice. Although, therefore, rules were framed by which a defendant was enabled to obtain actual relief in the pending action against the plaintiff, either alone, or together with any other person or persons, whether already parties to the action or not, in respect of any claim, whether connected with the original subject-matter of the action or not (see Sup. Cot. Jud. Act, 1873, s. 24, subs. 3; R. S. C. Ord. XIX. 3; R. S. C. Ord. XXII. 5 to 10; and *post*, pp. 255, 256, 257), yet no rules were made enabling a defendant to obtain actual relief in the pending action in respect of a claim, though relating to or connected with the original subject of the action, which such defendant has, not against the plaintiff, but against some other person or persons; *Treleven* v. *Bray*, 45 L. J. Ch. 113, *per* Mellish L. J., at p. 114; *Padwick* v. *Scott*, 2 Ch. D. 736, *per* Hall, V.-C., at pp. 743, 744; *Warner* v. *Twining*, 24 W. R. 536, *per* Jessel, M. R. Rules, however, were framed which enable a defendant who has a claim, relating to or connected with the original subject of the action, against a co-defendant, or a third person not a party to the action, to bind such person conclusively by the determination in the pending action of the question between them; these rules are the following: Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, he may give notice thereof to such person; R. S. C. Ord. XVI. 17; where such person is already a defendant to the action, the notice is given by delivery to him of a copy of the statement of defence of the defendant setting up such claim; *Shepherd* v. *Beane*, 2 Ch. D. 223; *Furness* v. *Booth*, 4 Ch. D. 586; but where such person is not already a party to the action the defendant must, with the leave of the Court or a Judge, serve upon such person a notice in writing stating the nature and grounds of his claim, and also a copy of the statement of claim, or, if there be no statement of claim, then a copy of the writ of summons in the action; R. S. C. Ord. XVI. 18. If the party so

334.

Motion paper, for leave to issue and serve notice under Ord. XVI., rule 18 (*b*).

Formal parts: see post No. 1570.

To move on behalf of the defendant A. B. for leave to issue a notice in this action under the Rules of the Supreme Court, Order XVI., rule 18, and to serve the same together with a copy of the statement of claim [*If there is no statement of claim, say:* of the writ of summons] in this action on C. D.

[*If* C. D. *is out of the jurisdiction, add:*] at ——, in the (kingdom) of ——, out of the jurisdiction of the Court (*c*).

served desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he will be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise; but a person so served and failing to appear within the said period of eight days may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a Judge shall think fit; R. S. C. Ord. XVI. 20. If such person appears pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined; and the Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the Court or a Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question; R. S. C. Ord. XVI. 21. Where a party was brought in under rule 17, and judgment was given for the defendant, it was held that the third party was not entitled to costs against the plaintiff; *Williams* v. *South Eastern Railway Co.*, 26 W. R. 352.

(*b*) An application for leave to serve the notice seems to be necessary only where the person to be served is not a party to the action; see R. S. C. Ord. XVI. 18, and *ante*, p. 167, note (*a*). It should be supported by an affidavit: for form, see *post* No. 336. The application must be made, and the notice served, before the expiration of the time limited for delivering the statement of defence; R. S. C. Ord. XVI. 18. Leave will not be given in a case where the defendant cannot become entitled to any remedy or relief over against the person whom it is sought to serve, as where the defendant and such person are joint tort feasors; *Horwell* v. *London General Omnibus Co.*, 2 Ex. D. 365. But it is not necessary that the person whom it is sought to serve should be interested in all the questions arising in the pending action; it is sufficient that he is interested in some one substantial question arising therein; *Benecke* v. *Frost*, 1 Q. B. D. 419; *Swansea Shipping Co.* v. *Duncan*, 1 Q. B. D. 644; *Bower* v. *Hartley*, 1 Q. B. D. 652. But the Court or Judge has a discretion as to giving leave; and will not give leave if the introduction of a third person would prejudice or delay the plaintiff; *Bower* v. *Hartley*, 1 Q. B. D. 652.

(*c*) A notice, under R. S. C. Ord. XVI. 18, may be served out of the jurisdiction; *Swansea Shipping Co.* v. *Duncan*, 1 Q. B. D. 644.

335. Notice of motion or summons, for like (*b*).

Formal parts: see post No. 1571 *or* No. 881.
on the part of the defendant A. B., that the said defendant A. B. may be at liberty to issue a notice [*Conclude as in* No. 334 *ante*].

336. Affidavit in support.

Formal parts: *see post* No. 693.

1. The plaintiff's claim in this action is for [*Here state the nature of the plaintiff's claim, as thus:*] damages for the breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

2. [*Here show the nature of the defendant's claim over against the person whom it is sought to serve, as thus:*] I claim to be indemnified by C. D., of [*residence and addition*], against all liability in respect of the said contract, or of any breach thereof, on the ground that the said contract was made by me on the behalf of and as agent for the said C. D.

3. I am advised and verily believe that I have a just and true cause of action against the said C. D. in respect of the matters aforesaid.

[*If* C. D. *is resident out of the jurisdiction, conclude:*]

4. The said C. D. is resident at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court.

337. Notice under Ord. XVI., rule 18 (*d*).

In the High Court of Justice, Chancery Division.
[*Name of Judge.*]

187—. No. .

Notice filed —— day of ——, 187—.

Between —— . . . Plaintiff,
and
—— . . . Defendant.

To ——, of [*residence and addition*].

Take notice that this action has been brought by the plaintiff against the defendant C. D. [*Here state the nature of the plaintiff's*

(*b*) See note (*b*) to No. 334 *ante*.

(*d*) See R. S. C. Ord. XVI. 18, and App. (B), form No. 1. This notice is only necessary where the person to be served is not a party to the action; R. S. C. Ord. XVI. 18; *Shephard* v. *Beane*, 2 Ch. 223; *Furness* v. *Booth*, 4 Ch. D. 586; where such person is already a defendant, the co-defendant seeking to bind him should deliver to him a copy of his statement of defence; *Shephard* v. *Beane, ubi supra*; *Furness* v. *Booth, ubi supra*. The notice must state the nature of the plaintiff's claim in the action, and the ground upon which the defendant giving the notice claims remedy or relief over against the person to whom it is given; R. S. C. Ord. XVI. 18. The notice must be issued by being sealed by the Record and Writ Clerk, or the District Registrar, with the seal with which writs of summons are sealed; R. S. C. Ord. XVI. 18. On issuing the notice a fee of 2*s*. 6*d*. is payable by a stamp impressed upon or adhesive to the notice; Order as to Court Fees, Oct. 1875, Sched.; Order as to Fees, April, 1876, Sched.; Wilson 506, 522. On issuing the notice a

claim in the action and the ground on which the defendant giving the notice claims relief against the person to whom it is given; as:]

as surety for M. N., upon a bond conditioned for payment of £2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under the said bond [*Or*, on the ground that you also are surety for the said M. N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the —— day of ——, A.D. ——]. *Or*,

as acceptor of a bill of exchange for £500, dated the —— day of ——, A.D. ——, drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation. *Or*,

to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D., you must cause an appearance to be entered for you within —— (*d d*) days after service of this notice.

In default of your so appearing, you will not be entitled in any future proceeding between the defendant C. D. and yourself to dispute the validity of the judgment in this action, whether obtained by consent or otherwise.

Dated this —— day of ——, 187—.

[*Name and address of solicitor or party giving the notice; see ante* No. 92.]

NOTE.—Appearance to be entered at the

[*If the action is proceeding in London, say:*]

Record and Writ Clerk's Office, Chancery Lane, London.

[*If the action is proceeding in a District Registry, say:*]

District Registry at ——, in the county of ——.

copy thereof must be filed with the officer by whom the notice is issued; R. S. C. Ord. XVI. 18. The notice must be served according to the rules relating to the service of writs of summons; *Ibid.* As to the service of writs of summons, see R. S. C. Ords. IX., X., and XI., and *ante*, p. 136, note (*a*); p. 138, note (*d*); p. 142, note (*r*). With the notice must be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action; R. S. C. Ord. XVI. 18. Such service must take place within the time limited for delivering the statement of defence in the action; *Ibid.*

(*d d*) Here fill in the number of days within which an appearance is to be

338. Memorandum of appearance (*f*).

Ordinary Appearance to Notice (*e*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

Enter an appearance for —— to the notice issued in this action on the —— day of ——, 187—, by the defendant —— under the Rules of the Supreme Court, Order XVI., rule 18 [*Conclude as in* No. 294 *ante*].

339. Notice of motion, or summons, for leave to enter appearance, notwithstanding the time has elapsed (*g*).

Formal parts: see post No. 1571 *or* 881.

on the part of ——, who has been served with a notice issued in this action on the —— day of ——, 187—, by the defendant, under the Rules of the Supreme Court, Order XVI., rule 18, that he may be at liberty to enter an appearance to the said notice, notwithstanding that the time limited for so doing has expired.

entered. Where the notice is served on a person within the jurisdiction, an appearance must be entered within eight days after service; R. S. C. Ord. XVI. 20. Where the person served is resident out of the jurisdiction, the order giving leave to effect service will limit the time for appearance; *Swansea Shipping Co.* v. *Duncan*, 1 Q. B. D. 644; and see note (*m*) to No. 213 *ante*.

(*e*) If the person served is not already a party to the action, and he desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf notice has been given, he must enter an appearance in the action within eight days after notice has been given; otherwise he will be deemed to admit the validity of the judgment obtained against such defendant whether obtained by consent or otherwise; R. S. C. Ord. XVI. 20; but no actual remedy or relief can be obtained against him in the pending action: for that purpose the defendant serving the notice must bring an action of his own; *Treleven* v. *Bray*, 45 L. J. Ch. 113, *per* Mellish, L. J., at p. 114; *Padwick* v. *Scott*, 2 Ch. D. 736, *per* Hall, V.-C., at pp. 743, 744; *Warner* v. *Twining*, 24 W. R. 536, *per* Jessel, M. R.; and *supra*, p. 167 note (*a*). Where the person served intends to apply to set aside the notice on any ground, he should not enter an ordinary appearance, but he should enter a conditional appearance with the registrar; see *post*, forms 341 to 343.

(*f*) Where the action is proceeding in London, an ordinary appearance is entered with the Record and Writ Clerk; where it is proceeding in a district registry, with the district registrar. On entering it a fee of 2*s.* is payable for each person; Order as to Court Fees, Oct. 1875, Sched.: Wilson, 506; this is payable by a stamp impressed on the memorandum, and where the appearance of more than one person is entered by the same memorandum the fees for all persons beyond the first may be denoted by means either of impressed or of adhesive stamps; Order as to Fees, April, 1876, Sched.; Wilson, 522.

(*g*) A person served with notice, and failing to appear within the period of

340.
Notice of appearance.

Formal parts : see ante No. 21.

Take notice that I have this day entered an appearance on behalf of ——, of ——, to the notice issued in this action on the —— day of ——, 187—, by the defendant ——, under the Rules of the Supreme Court, Order XVI., rule 18.

341.
Motion paper, for leave to enter conditional appearance to notice (*i*).

Conditional Appearance to Notice (*h*).

Formal parts : see post No. 1570.

To move on behalf of ——, who has been served with a notice issued in this action on the —— day of ——, 187—, by the defendant, under the Rules of the Supreme Court, Order XVI., rule 18, and intends to apply to set aside such notice, that he may be at liberty to enter a conditional appearance with the Registrar upon the usual submission.

342.
Petition of course, for the like (*i*).

Formal parts : see post No. 1576.

The humble petition of ——, of [*residence and addition*].

Showeth as follows :

1. Your petitioner has been served with a notice issued in this action on the —— day of ——, 187—, by the defendant ——, under the Rules of the Supreme Court, Order XVI., rule 18.

2. Your petitioner is advised that he is entitled to have such notice set aside, and is desirous to enter an appearance to such notice with the Registrar preparatory to an application for setting aside the same to this honourable Court.

Your petitioner therefore humbly prays that he may be at liberty to enter a conditional appearance to the said notice with the Registrar upon the usual submission.

And your petitioner will ever pray, &c.

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eight days after service, may nevertheless apply to the Court or Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit; R. S. C. Ord. XVI. 20. The application should be supported by an affidavit explaining the delay.

(*h*) Where the person served intends to apply to set aside the notice, he should enter a conditional appearance with the Registrar ; it would seem, by analogy to the practice with reference to applications to set aside a writ of summons or service thereof, that any objection to the notice would be waived by entering an ordinary appearance ; see Dan. Pr. 459 ; and *ante*, p. 150, note (*k*).

(*i*) In order to enter a conditional appearance, an order must be obtained giving leave to do so. The order may be obtained *ex parte* on motion or petition of course ; see *ante*, p. 150, note (*k*).

343.

Memorandum of entry of conditional appearance (*k*).

—— day of ——, 187— [*Date of entering appearance*].

187—. No. .

—— *v.* ——.

——, of [*residence and addition*], has this day entered his conditional appearance to the notice issued in this action on the —— day of ——, 187—, by the defendant ——, under the Rules of the Supreme Court, Order XVI., rule 18, by Mr. ——, of [*place of business*], his solicitor.

X. Y.

Solicitor for the said ——.

344.

Notice of motion, or summons, to set aside notice (*l*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff; *Or*,

on the part of ——, who has been served with a notice issued in this action on the —— day of ——, 187 , by the defendant ——, under the Rules of the Supreme Court, Order XVI., rule 18, and has entered a conditional appearance thereto,

that the order made in this action dated the —— day of ——, 187—, whereby it was ordered that the defendant —— should be at liberty to issue a notice in this action under the Rules of the Supreme Court, Order XVI., rule 18, and to serve the same upon (the said) ——, may be discharged; and that the notice issued by the said defendant under the said order, and the service of the said notice on the said ——, and the (conditional) appearance to the said notice entered by the said ——, may be set aside; and that the said defendant —— may be ordered to pay to the plaintiff his costs of this application, and may be further ordered to pay to the said —— his costs of entering an appearance to the said notice and of this application.

(*k*) For mode of entering a conditional appearance, see *ante* No. 302, note (*kk*).

(*l*) For applications to set aside a notice issued under Ord. XVI. rule 18, see *Benecke* v. *Frost*, 1 Q. B. D. 419; *Swansea Shipping Co.* v. *Duncan*, 1 Q. B. D. 644; *Bower* v. *Hartley*, 1 Q. B. D. 652; *Horwell* v. *London General Omnibus Co.*, 2 Ex. D. 365. The application should be supported by an affidavit showing the grounds on which it is sought to set aside the notice. It will be sufficient to show that the introduction of a third person will prejudice or delay the plaintiff; *Bower* v. *Hartley*, 1 Q. B. D. 652; or that the defendant giving the notice can not become entitled to any remedy or relief over against the person served, as where they are joint tort-feasors; *Horwell* v. *London General Omnibus Co.*, 2 Ex. D. 365.

345. Notice of motion, or summons, for directions as to mode of having questions determined (*m*).

Formal parts : see post No. 1571 *or* 881.

on the part of the defendant —— [*Here insert name of the party giving the notice*] for directions as to the mode of having the question [*Here state concisely the question by the determination of which in the action it is desired to bind the party served ; as :*]

whether there has been a breach of the contract for the sale and delivery to the plaintiff of 1,000 tons of coal, mentioned in the indorsement of claim on the writ of summons [*Or*, in the statement of claim] in this action,

determined.

(*m*) If the person served appears pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined ; and the Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as may seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the Court or Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question ; R. S. C. Ord. XVI. 21. The person served can not obtain an order under Ord. XVI. rule 18, to serve notice on some other person against whom he has any claim over for remedy or relief ; *Walker* v. *Balfour*, 25 W. R. 511.

CHAPTER VI.

PROCEEDINGS OF THE PLAINTIFF AFTER SERVICE OF THE WRIT AND BEFORE PLEADING.

PART I.—WHERE THE DEFENDANT MAKES DEFAULT IN APPEARING TO THE WRIT (*a*).

SECTION I.—THE AFFIDAVIT OF SERVICE.

346. Affidavit of service of writ of summons (*a*).

Formal parts : see post No. 693.

1. I did on ——day, the —— day of ——, 187—, serve the above-named defendant ——,

[*If husband and wife are both defendants to the action, and no order has been made for service on the wife separately, say :*]

the above-named defendants ——, and ——, his wife (*b*) with the writ of summons in this action, which appeared to me to have been regularly issued out of the Chancery Division of this honourable Court against the above-named defendants at the suit of the above-named plaintiff, and was dated on the —— day of ——, 187—, by [*Here describe the mode of service, as thus :*]

(*a*) Where a defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance, he must, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be ; R. S. C. Ord. XIII. 2. In proceedings under the Bills of Exchange Act (18 & 19 Vict. c. 69), the plaintiff must either file an affidavit of personal service of the writ, or an order for leave to proceed as if personal service had been effected; see the Act, s. 1 ; for form of affidavit of personal service, see *post* No. 1499 a ; for forms of application for leave to proceed as if personal service had been effected, and of affidavit in support, see *post* Nos. 1500 to 1502. As to the plaintiff's proceedings where the defendant is an infant or a person of unsound mind not so found, see R. S. C. Ord. XIII. 1 ; and *ante*, forms Nos. 78, 79, and Nos. 145, 146, and notes thereto.

(*b*) See R. S. C. Ord. IX. 3 ; and *ante*, p. 136, note (*a*).

Where personal service effected (*c*).

[*If the service was personal:*] delivering a true copy of the said writ of summons to, and leaving the same with, the said defendant ——, personally, at [*State where*], in the county of ——.

Where defendant is an infant (*d*).

[*If the defendant served was an infant, and no order has been made for service on the infant personally:*] delivering a true copy of the said writ of summons to, and leaving the same with ——, the father [*Or*, the guardian] of the said defendant ——, who is an infant under the age of twenty-one years, at [*State where*], in the county of ——.

[*If such infant defendant has no father or guardian:*] delivering a true copy of the said writ of summons to, and leaving the same with ——, the person with whom the said defendant —— resides [*Or*, the person under whose care the said defendant —— is] at [*State where*], in the county of ——, the said defendant —— being an infant under the age of twenty-one years, and having no father or guardian.

Where defendant is a lunatic (*e*).

[*If the defendant served was a lunatic, and no special order as to service has been made:*] delivering a true copy of the said writ of summons to, and leaving the same with ——, the committee of the said defendant ——, who is a lunatic, so found by proceedings in lunacy, at [*State where*].

Where defendant is a person of unsound mind not so found by inquisition (*ee*).

[*If the defendant served was a person of unsound mind, though not so found by inquisition, and no special order as to service has been made:*] delivering a true copy of the said writ of summons to, and leaving the same with ——, at [*State where*], the said defendant —— being a person of unsound mind not so found by inquisition, and the said —— being the person with whom the said defendant —— resides [*Or*, the person under whose care the said defendant —— is].

(*c*) As to what is personal service, see p. 136, note (*a*)

(*d*) As to service on an infant, see R. S. C. Ord. IX. 4, and Nos. 68 to 70 *ante*, and notes thereto. As to the plaintiff's proceedings, where an infant defendant does not appear, see R. S. C. Ord. XIII. 1, and Nos. 78, 79 *ante*, and notes thereto.

(*e*) As to service on a lunatic, see R. S. C. Ord. IX. 5; and Nos. 111 to 113 *ante*, and notes thereto.

(*e e*) As to service on a person of unsound mind not so found by inquisition, see R. S. C. Ord. IX. 5; and Nos. 135 to 137 *ante*, and notes thereto. As to the plaintiff's proceedings where a defendant who is a person of unsound mind does not appear, see R. S. C. Ord. XIII. 1; and *ante* Nos. 145, 146, and notes thereto.

[*Where the defendants are liable as co-partners, and are sued in the name of their firm:*] delivering a true copy of the said writ of summons to, and leaving the same with ——, a partner in the said firm of ——, at [*State where*]. *Or,* Where defendants are co-partners sued in their firm name (*f*).

delivering a true copy of the said writ of summons to, and leaving the same with ——, being the person having, at the time of such service, the control or management of the business of the said partnership firm at ——, the principal place within the jurisdiction of this Court of the business of the said partnership firm, such service being effected at ——, aforesaid.

[*If the defendants served were a corporation aggregate:*] delivering a true copy of the said writ of summons to, and leaving the same with ——, being the mayor [*or as may be*], and head officer of the said defendants, the ——, at [*State where*]. *Or,* Where defendants are a corporation aggregate (*g*).

delivering a true copy of the said writ of summons to, and leaving the same with ——, being the Town Clerk [*Or,* clerk; *Or,* treasurer; *Or,* secretary] of the said defendants, the ——, at [*State where*].

[*If the defendants served were the inhabitants of a hundred or other like district:*] delivering a true copy of the said writ of summons to, and leaving the same with ——, being the High Constable [*Or,* one of the High Constables] of the said hundred of —— [*or as may be*], at [*State where*]. Where defendants are the inhabitants of a hundred, or like district (*g*).

[*If the defendants served were a limited company, incorporated under the Companies Act,* 1862 :] leaving a true copy of the said writ of summons at the registered office of the defendants, the said —— Company, Limited, situate at ——, with a clerk [*Or,* servant] of the said defendant Company. *Or,* Where defendants are a limited company (*h*).

putting into the post-office receiving-house, situate at No. —, in —— Street, in the (city) of ——, a letter, duly addressed to the said defendants, "The —— Company, Limited," at their registered office, situate at ——, such letter having the proper postage-stamp affixed thereto as a pre-paid letter, and containing, at the time of the same being posted as aforesaid, a true copy of the said writ of summons.

2. At the time of the service of the said writ being so effected in manner aforesaid, memoranda were subscribed to the said writ, and to the copy thereof so delivered and left [*Or,* so left; *Or,* so

(*f*) See R. S. C. Ord. IX. 6, 6*a*; R. S. C. June, 1876; and *ante*, note (*a*), at p. 137.

(*g*) See R. S. C. Ord. IX. 7; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 16; and *ante*, p. 137, note (*a*).

(*h*) See R. S. C. Ord. IX. 7; the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 62; and *ante*, p. 137, note (*a*).

sent by post] as aforesaid; and indorsements were made on the said writ, and on the said copy thereof, in the manner and form prescribed by the rules of the Supreme Court.

[*If the writ was endorsed under Ord. III., r. 6, add:*] And there were also endorsed on the said writ, and on the said copy thereof, the particulars of the amount sought to be recovered by the plaintiff in this action, after giving credit for any payment or set-off.

[*If the writ was endorsed under Ord. III., r. 8, add:*] And the said writ, and the said copy thereof, were also endorsed with a claim to have an account taken [*here set out the claim*].

3. I did afterwards, namely, on —— day, the —— day of ——, 187—, endorse on the said writ the day of the month and week of the service thereof (*j*).

347.

Affidavit of service of writ of summons in action for the recovery of land in case of vacant possession (*o*).

Formal parts: see post No. 693.

1. [*Show what efforts have been made to serve the defendant personally, and that he keeps out of the way to evade service of the writ, or that for some other reason personal service cannot be effected.*]

2. I did on —— day, the —— day of ——, 187—, post a true copy of the writ of summons in this action, which appeared to me to have been regularly issued out of the Chancery Division of this honourable Court, against the above-named defendant at the suit of the above-named plaintiff, and was dated on the —— day of ——, 187—, upon the outer door of the dwelling-house, for the recovery whereof this action is brought [*Or, state the posting of a copy of the writ of summons upon some other conspicuous part of the property*].

3. At the time of posting the said copy of the said writ of summons in manner aforesaid, the possession of the property in the endorsement on the said writ of summons mentioned, and for the recovery whereof this action is brought, was vacant, neither the said defendant ——, nor any other person or persons being then, to the best of my knowledge and belief, in or upon the said property, or any part thereof.

(*j*) The person serving a writ of summons must, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff will not be at liberty in case of non-appearance to proceed by default, and every affidavit of service of such writ must mention the day on which such indorsement was made; R. S. C. Ord. IX. 13. For form of indorsement, see *ante* No. 293. But the indorsement is not necessary where there has been an order for substituted service; *Dymond* v. *Croft*, 3 Ch. D. 512.

(*o*) In an action to recover land, service of the writ of summons may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling house or other conspicuous part of the property; R. S. C. Ord. IX. 8. As to what is a vacant possession, see Chitty's Arch. 1029.

4. At the time of the posting of the said copy writ in manner aforesaid, memoranda were subscribed to the said writ of summons, and to the copy thereof so posted as aforesaid; and endorsements were made on the said writ, and on the said copy thereof, in the manner and form prescribed by the rules of the Supreme Court.

5. I did afterwards, namely, on —— day, the —— day of ——, 187—, endorse on the said writ of summons the day of the month and week of the service thereof, by posting the said copy writ in manner aforesaid (*p*).

—

348.

Affidavit of service of writ of summons where order made for substituted or other service, or for the substitution of notice for service (*q*).

Formal parts: see post No. 693.

1. I did on —— day, the —— day of ——, 187—, serve the above-named defendant ——, with the writ of summons in this action, which appeared to me to have been regularly issued out of the Chancery Division of this honourable Court, against the above-named defendants at the suit of the above-named plaintiff, and was dated on the —— day of ——, 187—, by [*here describe the mode in which the service was effected, which should be in strict accordance with the terms of the order permitting service other than personal service*].

2. At the time of the service of the said writ of summons being so effected in manner aforesaid, memoranda were subscribed to the said writ [*If service was effected by delivering or sending a copy of the writ, add:*] and to the copy thereof so delivered [*Or*, sent; *or as the case may be*] as aforesaid; and endorsements were made on the said writ [*If so:* and on the said copy thereof] in the manner and form prescribed by the rules of the Supreme Court [*If the writ was endorsed under Ord. III., rule* 6 *or* 8, *conclude as in paragraph* 2 *of* No. 346 *ante. No statement of the endorsement of the day of the month and week of the service of the writ is necessary, as Ord. IX. rule* 13, *does not apply to cases of substituted service; Dymond* v. *Croft*, 3 *Ch. D.* 512].

— — —

349.

Affidavit of service of notice of a writ of summons on a foreign subject out of the jurisdiction (*r*).

Formal parts: see post No. 693.

1. I did on —— day, the —— day of ——, 187—, serve the above-named defendant ——, with a notice of the writ of summons in this action, which appeared to me to have been regularly issued out of the Chancery Division of this honourable Court,

(*p*) See R. S. C. Ord. IX. 13; and *ante* No. 346, note (*j*).

(*q*) See R. S. C. Ord. IX. 2; *Ibid.*, Ord. X.; and *ante* Nos. 284 to 289. The 13th rule of Ord. IX. (see *ante* No. 346, note (*j*)), does not apply to cases of substituted service; *Dymond* v. *Croft*, 3 Ch. D. 512.

(*r*) Notice in lieu of service of a writ of summons is given where the defendant is resident out of the jurisdiction, and is not a British subject. For

against the above-named defendant at the suit of the above-named plaintiff, and was dated on the —— day of ——, 187—, by delivering the said notice to, and leaving the same with, the said defendant ——, personally, at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court [*Or, as may be ; see* No. 346 *ante, or, if substituted service of the notice has been allowed, see* No. 348 *ante*].

2. At the time of the service of the said notice in manner aforesaid, memoranda were subscribed to the said writ, and endorsements were made thereon and on the said notice (*s*) in the manner and form prescribed by the rules of the Supreme Court [*If the writ was endorsed under Ord. III., rule* 6 *or* 8, *conclude as in paragraph* 2 *of* No. 346 *ante*].

3. The said notice at the time of the service thereof purported to be signed, and was, as I am informed and verily believe, signed by ——, of [*residence and addition*], the above-named plaintiff [*Or*, by ——, of [*residence*], the solicitor for the above-named plaintiff]. A true copy of the said notice is now produced and shown to me, and marked A (*t*).

4. I did afterwards, namely, on —— day, the —— day of ——, 187—, endorse on the said writ of summons the day of the month and week of the service of the said notice.

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form of notice, see R. S. C. Ord. II. 5, and App. (A), Pt. I. No. 3; and *ante* No. 291. For the indorsements which must be made on the notice, see R. S. C. Ord. IV. and R. S. C. Feb. 1876, rule 3; and *ante* No. 292, note (*c*). As to the mode in which the notice is given, see R. S. C. Ord. XI. 5 ; and *ante* No. 291, note (*w*). An affidavit of service of a writ of summons on a defendant resident out of the jurisdiction, who is a British subject, will be in the ordinary form ; see No. 346 *ante*.

(*s*) See R. S. C. Ord. IV. and R. S. C. Feb., 1876, rule 3, and *ante* No. 292, ote (*c*).

(*t*) For form of memorandum of exhibit, see No. 723 *post*.

Section II.—Plaintiff's Proceedings in an Action for a Debt or Liquidated Demand.

(1.) *Where the Writ of Summons is specially endorsed under R. S. C., Ord. III., rule 6 (a).*

350. Final judgment, where action for debt or liquidated demand, and writ indorsed under Ord. III., rule 6 (*l*)

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . Defendants.

30th November, 1876.

The defendants [*Or*, The defendant C. D.] not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff recover against the defendants [*Or*, the said defendant C. D.] £——, and costs to be taxed.

(*a*) If the writ of summons is specially indorsed under R. S. C. Ord. III. 6, and the defendant, or all the defendants, make default in appearing to such writ, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs; but the Court or a Judge may set aside or vary such judgment upon such terms as may seem just; R. S. C. Ord. XIII. 3. For form of application to set aside or vary such judgment, see *post* No. 386. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money under Ord. III. rule 6, and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared; R. S. C. Ord. XIII. 4.

(*b*) For this form, see R. S. C. Ord. XII. 1, and App. (D), form 1. Where the writ issued out of the London office, the judgment is entered in the Registrar's Office; where the writ issued out of a district registry the judgment is entered in that registry; see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 64; R. S. C. Ord. XXXV. 1*a* (R. S. C. June, 1876, rule 12). As to the entry of judgment, see R. S. C. Ord. XLI. The mode of proceeding where judgment is entered in London is as follows: The plaintiff or his solicitor must produce to the Registrar the following documents: 1. The original writ of summons; 2. The original affidavit of service (for forms, see *ante* Nos. 346 to 349); 3. The Record and Writ Clerk's certificate of no appearance having been entered; 4. Two forms of judgment. The Registrar's clerk will examine these documents, and if they are regular and contain all that is by law required (R. S. C. Ord. XLI. 4), he will mark the copies of the judgment as examined. The Registrar of the day for signing certificates of sale and transfer will then pass the judgment by putting his initials to it, and affixing his seal

(2.) *Where the Writ of Summons is not specially endorsed* (*g*).

to the duplicate; the judgment must then be entered at the entering seat, the duplicate being left with the Clerk of Entries. When entered in the Registrar's book it will be marked with the folio of the entry, indexed, transmitted to the Record and Writ Clerk's Office, recorded in the Cause book, and filed (Seton, ed. 4, pp. 12, 13). If the judgment is entered in the district registry, the original writ of summons, and the affidavit of service, together with two forms of judgment, must be produced to the district registrar, who will examine the same, and if they are regular will proceed to enter judgment; R. S. C. Ord. XLI. 4. The judgment will be entered in the district registry in the proper book in the same manner as a like judgment in an action proceeding in London would be entered in London; R. S. C. Ord. XXV. 1*a* (R. S. C. June, 1876, rule 12). In such case the costs will be taxed in the district registry, and all writs of execution for enforcing the judgment must issue from the district registry; R. S. C. Ord. XXXV. 3. Judgment for want of appearance cannot be entered until after the expiration of the time limited by the writ for appearance, and where the writ was issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the London office, judgment for want of appearance cannot be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought, in due course of post, to have reached him; R. S. C. Ord. XIII. 5*a* (R. S. C. December, 1875, rule 7). For the cases in which the defendant has such an option as mentioned in this rule, see R. S. C. Ord. XII. 3, and *ante*, p. 146, note (*b*). The judgment will be dated as of the day when the requisite documents are left with the proper officer for the purpose of entering the judgment; R. S. C. Ord. XLI. 3. The fee on entering a judgment is 10*s.* on the lower scale, and £1 on the higher scale; Order as to Court Fees, 28th Oct. 1875, Sched.; Wilson, 506; this fee is payable by a stamp either impressed or adhesive; Order as to Fees, 22nd April, 1876, Sched.; Wilson, 522.

(*g*) Where the plaintiff's claim is for a debt or liquidated demand, but the writ of summons is not specially indorsed, and the defendant or all the defendants fail to appear to the writ of summons, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or of notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount be not more than the sum indorsed upon the writ besides costs; R. S. C. Ord. XIII. 5; where there are several defendants to the action, some of whom appear, and the other or others of whom do not appear, this rule does not apply; but upon the filing by the plaintiff of a proper affidavit of service, the action will proceed as if all the defendants had appeared; R. S. C. Ord. XIII. 9; in such a case the plaintiff will proceed to deliver his statement of claim, which, as to the defendant or defendants failing to appear, will be properly delivered by being filed with the proper officer, that is, if the action proceeds in London, the Clerk of Records and Writs; if the action proceeds in a district registry, the district registrar; R. S. C. Ord. XIX. 6, 29; and if the defendant or defendants failing to appear do not, within the time allowed to

351.

Statement of particulars of plaintiff's claim (*h*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between —— . . . . . Plaintiff,
and
—— . . . . . Defendant.

The following is a statement of the particulars of the plaintiff's claim in respect of the causes of action stated in the endorsement upon the writ of summons in this action :—

Bond dated 1st January, 1873. Condition for payment of £100 on 26th December, 1873.

Principal due	£50
Interest	—

352.

Final judgment (*j*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . . Defendants.

30th November, 1876.

The defendants not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff recover against the said defendants £—— and costs to be taxed.

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deliver a defence or demurrer, appear and deliver a defence or demurrer, the plaintiff may enter final judgment against such defendant or defendants, and issue execution upon such judgment without prejudice to his right to proceed with the action against the other defendants; R. S. C. Ord. XXIX. 3.

(*h*) See the forms of special indorsement under R. S. C. Ord. III. 6, *ante* Nos. 236 to 241.

(*j*) This form is applicable only where the sole defendant or all the defendants fail to appear. For the course of proceeding where some appear, and some do not, see *supra*, p. 182, note (*g*). The judgment cannot be entered until after the expiration of eight days from the filing of a statement of the particulars of the plaintiff's claim; R. S. C. Ord. XIII. 5. As to the mode of entering judgment, see *ante* No. 350, note (*b*). In addition to the documents there mentioned, where judgment is entered in London, the Record and Writ Clerk's certificate of the filing of a statement of the particulars of the plaintiff's claim must be produced to the Registrar. As to the date of the judgment, and the fee payable on entering the same, see the same note (*b*).

Section III.—Plaintiff's Proceedings in an Action for the Recovery of Goods and Damages, or either of them (*k*).

353.

Interlocutory judgment for recovery of value of goods and damages for their detention (*m*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between —— . . . . . Plaintiff,
and
—— . . . . . Defendants.
—— day of ——, 187— [*Date of entering judgment*].

The defendants not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff recover against the

(*k*) Where the plaintiff's claim is for the detention of goods and pecuniary damages, or either of them, and the defendant or all the defendants fail to appear to the writ of summons, no statement of claim need be delivered, but interlocutory judgment may be entered and a writ of inquiry may be issued to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, be ascertained in any way in which any question arising in an action may be tried; R. S. C. Ord. XIII. 6. As to the modes in which questions arising in an action may be tried, see R. S. C. Ord. XXXVI. 2; and *post* No. 740. For form of application as to the mode of ascertaining the value of the goods, and the amount of damages, or either of them, see *post* No. 358. The above rule (R. S. C. Ord. XIII. 6) only applies where there is a sole defendant, or where there are several defendants, of whom all fail to appear; where there are several defendants, of whom some appear, and the other or others fail to appear, this rule does not apply, and the plaintiff must file a proper affidavit of service on those failing to appear, and then proceed as if all the defendants had appeared; R. S. C. Ord. XIII. 9; in such a case the statement of claim will be delivered to the defendants failing to appear by being filed with the Record and Writ Clerk, or with the district registrar; R. S. C. Ord. XIX. 6, 29; and unless the defendant or defendants failing to appear do, within the time allowed for delivering a defence or demurrer, appear and deliver a defence or demurrer, the plaintiff may enter an interlocutory judgment against such defendant or defendants, and proceed with his action against the others; and damages against the defendant or defendants so making default will be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct; R. S. C. Ord. XXIX. 5.

(*m*) This form is applicable only where the sole defendant or all the defendants fail to appear; for the course of proceeding where some appear and some do not, see note (*k*), *supra*. As to the time for, and mode of, entering judgment, the date of the judgment, and the fee payable on entering the same, see *ante* No. 350, and note (*b*).

defendants the value of the chattels mentioned in the endorsement of claim on the writ of summons herein,

[*If damages for the detention of the goods are claimed, add:*] and also damages for the detention of the said chattels.

Such value (and damages) to be assessed (*n*).

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354. Interlocutory judgment for the recovery of damages (*m*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . . . Plaintiff,
and
—— . . . . . Defendant.

—— day of ——, 187— [*date*].

The defendants not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff do recover against the said defendants damages in respect of the matters mentioned in the endorsement of claim on the writ of summons herein, such damages to be assessed (*n*).

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355. Motion paper, for liberty to enter judgment for default of appearance for recovery of specific chattels (*o*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff, that he may be at liberty to enter judgment for want of appearance for the recovery of the chattels mentioned in the endorsement of claim on the writ of summons in this action [*If so:*] and for damages for the detention thereof.

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356. Summons for like purpose (*o*).

Formal parts: see post No. 881.

on the part of the plaintiff, that he may be at liberty [*Continue as in last form*, No. 355, *to end*].

(*m*) See note (*m*) to No. 353 *ante*.

(*n*) As to the mode of assessment of damages, see R. S. C. Ord. XIII. 6; *ante*, p. 184, note (*k*); and *post* Nos. 358, *et seq.*

(*o*) See *Ivory* v. *Cruickshank*, W. N. (1875) 249, where Quain, J. doubted whether judgment for the return of specific chattels might not be entered without an order.

357.

Final judgment for recovery of specific chattels, and interlocutory judgment for the recovery of damages for their detention (*p*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. and E. F . . . Defendants.
—— day of ——, 187— [*date*].

The defendants not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff recover against the defendants the following chattels, that is to say [*here enumerate the chattels as in the endorsement of claim on the writ of summons*],

[*If damages are claimed for the detention of the goods, add:*] and also damages for the detention thereof, such damages to be assessed;

And costs to be taxed (*q*).

(*p*) This judgment can only be entered where the sole defendant, or all the defendants make default in appearing; where some only make default, the plaintiff should file an affidavit of service upon them, and proceed as if all the defendants had appeared; R. S. C. Ord. XIII. 9. In that case the statement of claim may be delivered to the defendant or defendants failing to appear, by being filed with the Record and Writ Clerk, or the district registrar; R. S. C. Ord. XIX. 6, 29. If the defendant or defendants failing to appear do not, within the time allowed to deliver a defence or demurrer, appear and deliver a defence or demurrer, the plaintiff should proceed under R. S. C. Ord. XXIX. 11, and set down the action on motion for judgment against the defaulting defendant or defendants at the same time when he enters it for trial, or sets it down on motion for judgment, against the other defendant or defendants. The notice of motion for judgment may be served on any defendant or defendants failing to appear by being filed with the Record and Writ Clerk, or with the district registrar; R. S. C. Ord. XIX. 6, 29; *Dymond* v. *Croft*, 3 Ch. D. 512; *Morton* v. *Miller*, 3 Ch. D. 516. As to the mode of entering the judgment in the text, the documents to be produced to the officer entering it, the date of the judgment, and the fee payable on entering it, see *ante* No. 350, note (*b*).

(*q*) The judgment for costs should be entered only in case the judgment is a final one, *i. e.*, for the recovery of chattels only without damages.

358.
Notice of motion or summons to have value of goods or damages ascertained in one of the modes in which an action may be tried (*r*).

Formal parts: see post No. 1571 *or* 881.
on the part of the plaintiff, that the value of the goods and the amount of the damages [*Or*, that the amount of the damages] which the plaintiff is entitled to recover against the defendants may be ascertained [*Here specify the mode in which it is desired that the value or damages should be ascertained, which must be one of the modes in which a question arising in an action may be tried* (*s*), *as thus:*]

before a Judge [*Or*, Judges] without a jury; *Or*,
before a Judge sitting with assessors; *Or*,
before a Judge and jury; *Or*,
before an official referee; *Or*,
before an official referee with assessors; *Or*,
before a special referee; *Or*,
before a special referee with assessors.

359.
Summons for liberty to issue writ of inquiry to sheriff of some other county than Middlesex (*a*).

Formal parts: see post No. 881.
on the part of the plaintiff, that he may be at liberty to issue a writ of inquiry in this action directed to and to be executed before the Sheriff of —— (*b*), to assess the value of goods and damages [*Or*, to assess damages] under the judgment entered in this action and dated the —— day of ——, 187—.

(*r*) The ordinary course when interlocutory judgment is entered against all the defendants for the recovery of the value of goods and damages, or of damages only, is to issue a writ of inquiry to assess the value and damages, or damages; but the Court or a Judge may order that the value and damages, or damages, instead of being assessed on a writ of inquiry, shall be ascertained in any way in which a question arising in an action may be tried; R. S. C. Ord. XIII. 6. As to the modes in which questions arising in an action may be tried, see R. S. C. Ord. XXXVI. 2. The notice of motion or summons may be served by being filed with the clerk of Records and Writs, or with the district registrar; R. S. C. Ord. XIX. 6, 29. The application should be supported by an affidavit showing why it is desirable to depart in the particular instance from the ordinary rule as to the mode of assessing the damages. If an order be made upon the application, the plaintiff will set the action down to have the value and damages, or damages, ascertained in the same manner as an action is set down for trial; as to which, see *post*, p. 418, note (*a*).

(*s*) See R. S. C. Ord. XXXVI. 2.

(*a*) The circumstance of the plaintiff not having delivered a statement of claim creates some difficulty as to the place in which the writ is to be executed; it would seem from R. S. C. Ord. XXXVI. 1, that the writ must be executed in Middlesex unless a Judge otherwise orders; consequently, if it is desired to have the writ executed in any other county, it is necessary to apply by summons for such an order. The summons may be served by being filed with the Clerk of Records and Writs, or with the district registrar; R. S. C. Ord. XIX. 6, 29.

(*b*) See *post* No. 364

360.
Præcipe for writ of inquiry (*c*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between —— . . . Plaintiff,
and
—— . . . Defendants.

Seal a writ of inquiry, directed to the Sheriff of —— (*d*), to assess the value of goods and damages [*Or*, to assess damages] under the judgment entered in this action, and dated the —— day of ——, 187-—.

[*Name and address of solicitor or party issuing writ; see ante* No. 92.]

361.
Writ of inquiry to assess value of goods and damages, or damages only, after interlocutory judgment (*e*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and E. F. . Defendants.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of —— (*f*), greeting.

Whereas lately in our High Court of Justice, in a certain action

(*c*) A 5*s.* stamp must be impressed on this præcipe; Ord. as to Court Fees, 28 Octr., 1875, Sched.; Ord. as to Fees, 22 April, 1876, Sched.; Wilson, 506, 522.

(*d*) See *post* No. 364.

(*e*) This is the ordinary mode of assessing the value of goods and damages, or damages only, after interlocutory judgment has been entered; R. S. C. Ord. XIII. 6. The writ is prepared by the plaintiff or his solicitor; it is engrossed on parchment, and must be sealed by the Record and Writ Clerk, or, if the action is proceeding in a district registry, by the district registrar. On sealing it a fee of 5*s.* is payable; Ord. as to Court Fees, 28 Octr., 1875, Sched.; Wilson, 506; this fee is payable by means of a stamp impressed on the præcipe for the writ; Ord. as to Fees, 22 April, 1876, Sched.; Wilson, 522. For form of *præcipe*, see *ante* No. 360. The day on which the writ is to be executed should be indorsed on the writ, and it should be left at the sheriff's office two days at least before that day; and the sheriff will thereupon summon a jury for the execution of it. As to the execution of the writ, see Chitty's Arch. 1001—1003; and R. S. C. Ord. XXXVII. 1.

(*f*) The writ is directed to the sheriff of the county. It would seem that where the interlocutory judgment is entered for default of appearance, and no statement of claim has been delivered, it must be directed to the Sheriff of Middlesex, unless a Judge otherwise orders; see R. S. C. Ord. XXXVI. 1. If an order is obtained to have the writ executed in a county palatine, the writ is addressed to the sheriff of such county, and is executed and returned by him in the same manner in all respects as a writ addressed to the sheriff of any

there depending, wherein A. B. is plaintiff and C. D. and E. F. are defendants, by a judgment of our said Court made in the said action, and bearing date the —— day of ——, 187—, it was adjudged that the said A. B. should recover against the said C. D. and E. F. the value of the chattels mentioned in the indorsement of claim on the writ of summons in the said action, and also damages for the detention of the said chattels [*Or*, should recover against the said C. D. and E. F. damages in respect of the matters mentioned in the indorsement of claim on the writ of summons in the said action]. And whereas it is unknown to our said Court what is the value of the said chattels and the amount of the said damages [*Or*, what is the amount of the said damages]. Therefore we command you that, by the oath of twelve good and lawful men of your bailiwick (*g*), you diligently inquire what is the value of the said chattels and what damages the said A. B. has sustained by reason of the detention thereof [*Or*, what damages the said A. B. has sustained by reason of the matters aforesaid]; and that you send to us in our said Court on the —— day of ——, 187— (*h*), the inquisition which you shall thereupon take under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness, the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at ——, Westminster, the —— day of ——, 187— (*j*).

362. Indorsement on writ of inquiry, where plaintiff sues by solicitors (*k*).

[*Same as* No. 94 *ante*.]

other county; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 122; and Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 76. If the sheriff be a party to the suit, the writ must be directed to the coroner, and it must be stated in the writ that the sheriff is a party; Chitty, Forms, 510, note (*b*). As to the direction of the writ, see *post* No. 364.

(*g*) For form of application for order to have the writ executed before a special jury, see *post* No. 367.

(*h*) The writ may be made returnable, and may be returned, on any day certain in term or vacation, to be named in the writ. The return day is usually the day after that on which it is intended to execute the writ; it must not be before that day; Chitty, Forms, 511, note (*a*).

(*j*) The writ must bear date on the day on which it is issued, and must be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor be vacant, in the name of the Lord Chief Justice of England; R. S. C. Ord. II. 8.

(*k*) This indorsement is required by Cons. Ord. III. rule 2; and see R. S. C. Ord. IV. 1, 3*a* (R. S. C. Feb. 1876, 3), and R. S. C. Ord. XLII. 11.

363.
Indorsement on writ of inquiry where plaintiff sues in person (*l*).

[*Same as* No. 95 *ante*.]

364.
Directions of writs of inquiry.

ANGLESEY:—To the Sheriff of Anglesey.
BEDFORDSHIRE:—To the Sheriff of Bedfordshire (*m*).
BERKSHIRE:—To the Sheriff of Berkshire (*n*).
BERWICK-UPON-TWEED (TOWN OF):—To the Sheriff of the county of the borough and town of Berwick-upon-Tweed.
BRECONSHIRE:—To the Sheriff of Breconshire (*o*).
BRISTOL (CITY OF):—To the Sheriff of the city and county of Bristol (*a*).
BUCKINGHAMSHIRE:—To the Sheriff of Buckinghamshire (*b*).
CAMBRIDGESHIRE:—To the Sheriff of Cambridgeshire.
CANTERBURY (CITY OF):—To the Sheriff of the county of the city of Canterbury.
CARDIGANSHIRE:—To the Sheriff of Cardiganshire.
CARMARTHEN (TOWN OF):—To the Sheriff of the town and county of Carmarthen.
CARMARTHENSHIRE:—To the Sheriff of Carmarthenshire (*c*).
CARNARVONSHIRE:—To the Sheriff of Carnarvonshire.
CHESHIRE:—To the Sheriff of Cheshire.
CHESTER (CITY OF):—To the Sheriff of the county of the city of Chester.
CORNWALL:—To the Sheriff of Cornwall.
CORONERS:—To the Coroner of our city [*Or*, county] of —— (*e*).
CUMBERLAND:—To the Sheriff of Cumberland (*g*).
DENBIGHSHIRE:—To the Sheriff of Denbighshire (*h*).
DERBYSHIRE:—To the Sheriff of Derbyshire (*i*).
DEVONSHIRE:—To the Sheriff of Devonshire (*k*).

(*l*) This indorsement is required by Cons. Ord. III. 5; and see R. S. C. Ord. IV. 2, 3*a* (R. S. C. Feb. 1876, 3), and R. S. C. Ord. XLII. 11.
(*m*) See *Hughes* v. *Hughes*, 24 Aug. 1866, Reg. Lib. A. 2151.
(*n*) See *Edington* v. *Sloper*, 28 Jan. 1864, Reg. Lib. A. 93.
(*o*) See *Williams* v. *Games*, 1 Feb. 1869, Reg. Lib. B. 139.
(*a*) See *Gillow* v. *Brooks*, 5 Jan. 1869, Reg. Lib. A. 3.
(*b*) See *Hughes* v. *Hughes*, 13 Jan. 1866, Reg. Lib. A. 6.
(*c*) See *Knight* v. *Holden*, 13 Sept. 1866, Reg. Lib. A. 2118.
(*e*) As to when the writ should be directed to the coroner, see *ante* No. 361, note (*f*).
(*g*) See *Atkinson* v. *Milner*, 6 Aug. 1866, Reg. Lib. A. 1933.
(*h*) See *Attorney-General* v. *Jones*, 9 Jan. 1864, Reg. Lib. A. 8.
(*i*) See *Smalley* v. *Marsh*, 19 Mar. 1870, Reg. Lib. B. 614.
(*k*) See *Fraser* v. *Badlaff*, 1 Jan. 1869 Reg. Lib. A. 3.

DORSETSHIRE :—To the Sheriff of Dorsetshire (*l*).
DURHAM :—To the Sheriff of Durham (*ll*).
ESSEX :—To the Sheriff of Essex (*m*).
EXETER (CITY OF) :—To the Sheriff of the county of the city of Exeter.
FLINTSHIRE :—To the Sheriff of Flintshire.
GLAMORGANSHIRE :—To the Sheriff of Glamorganshire (*n*).
GLOUCESTER (CITY OF) :—To the Sheriff of the county of the city of Gloucester.
GLOUCESTERSHIRE :—To the Sheriff of Gloucestershire (*o*).
HAMPSHIRE :—To the Sheriff of Hampshire (*p*).
HAVERFORDWEST (TOWN OF) :—To the Sheriff of the county of the town of Haverfordwest.
HEREFORDSHIRE :—To the Sheriff of Herefordshire.
HERTFORDSHIRE :—To the Sheriff of Hertfordshire (*r*).
HUNTINGDONSHIRE :—To the Sheriff of Huntingdonshire.
ISLE OF ELY :—To the Sheriff of Cambridgeshire.
ISLE OF WIGHT :—To the Sheriff of Hampshire.
KENT :—To the Sheriff of Kent (*s*).
KINGSTON-UPON-HULL (TOWN OF) :—To the Sheriff of the town and county of Kingston-upon-Hull (*t*).
LANCASHIRE :—To the Sheriff of Lancashire (*ll*).
LEICESTERSHIRE :—To the Sheriff of Leicestershire (*u*).
LICHFIELD (CITY OF) :—To the Sheriff of the city of Lichfield, and the county of the same city.
LINCOLN (CITY OF) :—To the Sheriff of the county of the city of Lincoln.
LINCOLNSHIRE :—To the Sheriff of Lincolnshire (*x*).
LONDON :—To the Sheriffs of London (*y*).
MERIONETHSHIRE :—To the Sheriff of Merionethshire (*z*).
MIDDLESEX :—To the Sheriff of Middlesex (*a*).

(*l*) See *Scott* v. *Amey*, 20 Nov. 1866, Reg. Lib. B. 2224.

(*ll*) See C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 122 ; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 76.

(*m*) See *Bank of Hindustan, China, and Japan, Limited*, 6 Jan. 1869, Reg. Lib. A. 8.

(*n*) See *British Equitable Assurance Co.* v. *Vale of Neath Railway*, 4 Oct. 1866, Reg. Lib. A. 2164.

(*o*) See *Jones* v. *Cooke*, 27 Feb. 1864, Reg. Lib. A. 318.

(*p*) See *Franks* v. *Lloyd*, 28 July, 1870, Reg. Lib. A. 2006.

(*r*) See *Hare* v. *Roebuck*, 13 Aug. 1866, Reg. Lib. A. 2066.

(*s*) See *Gurnell* v. *Upton*, 11 Sept. 1866, Reg. Lib. A. 2111 ; and 18 & 19 Vict. c. 48, s. 2.

(*t*) See *Tadman* v. *Smith*, 9 May, 1866, Reg. Lib. B. 872.

(*u*) See *Smedley* v. *Smedley*, 1 Feb. 1869, Reg. Lib. B. 139.

(*x*) See *Hanslip* v. *Norwich and Spalding Railway*, 11 Feb. 1864, Reg. Lib. A. 209.

(*y*) See *McKenna* v. *Temple*, 7 Jan. 1869, Reg. Lib. A. 2.

(*z*) See *Tweedie* v. *Phelps*, 5 May, 1866, Reg. Lib. B. 842.

(*a*) See *Easton* v. *Watson*, 25 Jan. 1864, Reg. Lib. A. 26.

MONMOUTHSHIRE :—To the Sheriff of Monmouthshire.
MONTGOMERYSHIRE :—To the Sheriff of Montgomeryshire.
NEWCASTLE-UPON-TYNE (TOWN OF) :—To the Sheriff of the town and county of the town of Newcastle-upon-Tyne (*b*).
NORFOLK :—To the Sheriff of Norfolk (*c*).
NORTHAMPTON :—To the Mayor, Bailiffs, and Burgesses of Northampton.
NORTHAMPTONSHIRE :—To the Sheriff of Northamptonshire (*d*).
NORTHUMBERLAND :—To the Sheriff of Northumberland (*e*).
NORWICH (CITY OF) :—To the Sheriff of the county of the city of Norwich.
NOTTINGHAM (TOWN OF) :—To the Sheriff of the town and county of Nottingham.
NOTTINGHAMSHIRE :—To the Sheriff of Nottinghamshire (*f*).
OXFORD (CITY OF) or OXFORDSHIRE :—To the Sheriff of Oxfordshire (*g*).
PEMBROKESHIRE :—To the Sheriff of Pembrokeshire.
POOLE (TOWN OF) :—To the Sheriff of the town and county of Poole.
PORTSMOUTH :—To the Mayor, Aldermen, and Burgesses of our borough of Portsmouth, in the county of Southampton.
RADNORSHIRE :—To the Sheriff of Radnorshire.
RUTLANDSHIRE :—To the Sheriff of Rutlandshire.
SHROPSHIRE :—To the Sheriff of Shropshire (*h*).
SOMERSETSHIRE :—To the Sheriff of Somersetshire (*i*).
SOUTHAMPTON (TOWN OF) :—To the Sheriff of the town and county of Southampton.
SOUTHAMPTON (COUNTY OF) :—To the Sheriff of Hampshire.
SOUTHWARK (BOROUGH OF) :—To the Sheriff of Surrey.
STAFFORDSHIRE :—To the Sheriff of Staffordshire (*k*).
SUFFOLK :—To the Sheriff of Suffolk (*l*).
SURREY :—To the Sheriff of Surrey (*m*).
SUSSEX :—To the Sheriff of Sussex (*n*).
WARWICKSHIRE :—To the Sheriff of Warwickshire (*o*).

(*b*) See *Brandling* v. *Plummer*, 23 Aug. 1866, Reg. Lib. A. 2146.
(*c*) See *Hills* v. *Reynolds*, 5 Dec. 1866, Reg. Lib. A. 2507.
(*d*) See *Cooke* v. *Lovell*, 8 Feb. 1864, Reg. Lib. A. 183.
(*e*) See *Grainger* v. *Wright*, 29 Nov. 1865, Reg. Lib. A. 2203.
(*f*) See *Shepherd* v. *Allen*, 4 Sept. 1866, Reg. Lib. B. 2054.
(*g*) See *May* v. *Davenport*, 1 April, 1870, Reg. Lib. B. 758 ; and see *Granger* v. *Taunton*, 3 Bing. N. S. 64 ; Chitty's Forms, 305, note (*e*).
(*h*) See *Leighton* v. *Shrewsbury and N. W. Railway Co.*, 6 Dec. 1866, Reg. Lib. B. 2407.
(*i*) See *Marsh* v. *Mogg*, 21 May, 1866, Reg. Lib. B. 899.
(*k*) See *Marchant* v. *Blewitt*, 20 Sept. 1866, Reg. Lib. B. 2069.
(*l*) See *Hart* v. *Cuthbert*, 27 Feb. 1864, Reg. Lib. A. 329.
(*m*) See *Howard* v. *Crosse*, 12 July, 1865, Reg. Lib. A. 1368.
(*n*) See *Troup* v. *Ricardo*, 13 Dec. 1866, Reg. Lib. B. 2489.
(*o*) See *Manton* v. *Manton*, 23 Dec. 1869, Reg. Lib. B. 3029.

WESTMORELAND :—To the Sheriff of Westmoreland.
WILTSHIRE :—To the Sheriff of Wiltshire.
WORCESTER (CITY OF) :—To the Sheriff of the county of the city of Worcester.
WORCESTERSHIRE :—To the Sheriff of Worcestershire (*p*).
YORK (CITY OF) :—To the Sheriff of the county of the city of York.
YORKSHIRE :—To the Sheriff of Yorkshire (*q*).

365.
Notice of executing writ of inquiry (*r*).

Formal parts : see ante No. 21.

Take notice that a writ of inquiry of damages in this action will be executed on ——day, the —— day of ——, 187— (*s*), between the hours of eleven of the clock in the forenoon and one of the clock in the afternoon of the same day at [*here state where the writ of inquiry is to be executed* (*t*) *; as follows :*]

[*If it is to be executed in Middlesex, say :*] the Sheriff's Office, in Red Lion Square, near Holborn, in the county of Middlesex.

[*If it is to be executed in London, say :*] the Secondaries' Office, No. 5, Basinghall Street, in the city of London.

[*If the writ is to be executed in any other county, say :*] at the house of ——, commonly called or known by the name or sign of ——, in —— Street, at ——, in the county of ——.

366.
Notice of attending inquiry by counsel (*u*).

Formal parts : see ante No. 21.

Take notice that the plaintiff [*Or*, the defendants] will attend the execution of the writ of inquiry in this action by counsel.

(*p*) See *Hughes* v. *Saunders*, 2 Oct. 1866, Reg. Lib. A. 2166.

(*q*) See *Birdsall* v. *Bradley*, 22 Jan. 1864, Reg. Lib. A. 48.

(*r*) The plaintiff must give a written notice of the time and place for executing the writ of inquiry ; Chitty, Forms, 531, note (*c*). The notice is a ten days' notice ; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 97 ; and see R. S. C. Ord. XXXVI. 9. The notice may be given by being filed with the Record and Writ Clerk, or with the district registrar ; R. S. C. Ord. XIX. 6, 29 ; see *Dymond* v. *Croft*, 3 Ch. D. 512, and *Morton* v. *Miller*, 3 Ch. D. 516. As to the contents of the notice, see Chitty, Forms, 532, note.

(*s*) The inquisition must be held on or before the return day of the writ ; Chitty, Forms, 532, note, citing *Davies* v. *Salter*, 2 Salk. 627 ; *Dyke* v. *Blackston*, 2 Ld. Raym., 1449.

(*t*) As to the county in which the writ is to be executed, see *ante* No. 359 and note (*a*).

(*u*) This notice is not absolutely necessary, but if it be not given and the other party be taken by surprise, it will be good ground for the sheriff to adjourn the execution of the writ ; see Chitty, Forms, 534, note (*b*). If the notice be given by the plaintiff to the defaulting defendant, it may be so given by being filed ; R. S. C. Ord. XIX. 6, 29.

367.
Summons to have writ executed by special jury (*v*).

Formal parts; see post No. 881.
on the part of the plaintiff, that the writ of inquiry in this action may be executed by a good jury, to be taken from the special jury book and empanelled, returned, and sworn by the Sheriff of ——.

368.
Præcipe for writ of *subpœna* to compel attendance of witnesses on execution of writ of inquiry (*w*).

187—. No. .
In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between —— . . . Plaintiff,
and
—— . . . Defendants.
Seal a writ of *subpœna ad testificandum* [*If so:* and *duces tecum*] on behalf of the plaintiff [*Or*, defendant], directed to [*Insert the Christian and surnames of the witness or witnesses*].
Dated —— day of ——, 187—.
[*Name and address of solicitor or party, as in* No. 92 *ante.*]

369.
The writ of *subpœna* (*x*).

187—. No. .
In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between —— . . . Plaintiff,
and
—— . . . Defendants.
Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

(*v*) See Chitty, Forms, p. 512. The application should be supported by an affidavit, showing facts to warrant the order; *Ibid.* note (*b*). The summons may be served on a defaulting defendant by being filed; R. S. C. Ord. XIX. 6, 29.

(*w*) This *præcipe* must be impressed with a 5*s.* stamp, if the proceeding is on the higher scale, and with a 2*s.* 6*d.* stamp if it is on the lower scale; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*x*) All that the plaintiff has to prove, or that the defendant will be permitted to controvert upon the execution of the writ is the amount of the damages; the cause of action stated in the indorsement of claim on the writ of summons, and the right to some damages in respect of it, are admitted by the defendant by his permitting judgment to be entered against him by default; Chitty's Arch. 1001—1003; and *De Gaillon* v. *L'Aigle*, 1 B. & P. 368; *Eadem* v. *Lutman*, 1 Str. 612, there cited. The witnesses are to be examined *viva voce* and in open Court, but the Court or a Judge may at any time for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read on such conditions as the Court or Judge may deem reasonable, or that any witness whose

To [*Here insert the names of the witnesses* (*e*)], greeting.

We command you [*If more than one, add:*] and every of you, that, all other matters laying aside and notwithstanding any excuse, you (and every of you) be and appear in your own proper persons before our Sheriff of ——, on ——day, the —— day of ——, 187—, at the hour of eleven of the clock in the forenoon of the same day, at [*State the day, time, and place when and where the writ is to be executed, as in the notice of execution of the writ*], then and there to testify the truth according to your knowledge in a certain action depending in our High Court of Justice, wherein A. B. is plaintiff and C. D. and E. F. are defendants, on the part of the plaintiff [*Or*, of the defendants], in which action a writ of inquiry of damages will then and there be executed.

[*In the case of a subpœna duces tecum, add:*] and that you then and there bring with you and produce [*Here describe the documents which the witness is required to produce* (*f*)].

And this you or any of you shall in nowise omit under the penalty of £100.

Witness, the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, 187— (*g*).

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attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; R. S. C. Ord. XXXVII. 1. As to the evidence on the execution of a writ of inquiry, and the forms relating thereto, see *post*, the chapter on evidence (Chap. XI.), which applies as well to the execution of a writ of inquiry as to the trial of an action. The *subpœna* is engrossed on parchment, and is issued by being sealed by the Record and Writ Clerk or by the district registrar. On issuing it a fee of 2*s.* 6*d.* on the lower scale, or 5*s.* on the higher scale, is payable; Ord. as to Court Fees, 28 Oct. 1875, Sched.; Wilson, 506; this is payable by means of a stamp impressed on the *præcipe;* Ord. as to Fees, 22 April, 1876, Sched.; Wilson, 522. The *subpœna* must be served within twelve weeks after its date; Cons. Ord. XXVIII. 9. As to the service of the writ and tender of the witnesses' reasonable expenses, see Cons. Ord. XXVIII. 6; Dan. Pr. 802, 803; Chitty's Arch. 350—353. For form of indorsement on the writ, see *post* No. 370.

(*e*) When necessary or required, the *subpœna ad test.* must contain the names of three witnesses; Cons. Ord. XXVIII. 3; Ord. as to Court Fees, 28 Oct. 1875, Sched. tit. "Summonses, Writs, &c.;" no more than three persons can be included in one *subpœna duces tecum*, and the party suing out the same may sue out a separate *subpœna* for each person if it be deemed necessary or desirable; Cons. Ord. XXVIII. 4. The witnesses should be mentioned in the writ by their christian and surnames.

(*f*) As to the degree of particularity with which the documents must be described, see Dan. Pr. 802, note (*k*); Chitty, Forms, 208; and *post*, note (*d*) to No. 567.

(*g*) R. S. C. Ord. II. 8.

370.
Indorsement or writ of *subpœna* (*h*).

[*Same as* Nos. 94 *and* 95 *ante*, "defendant" *being substituted for* "plaintiff" *where the writ is issued by or on behalf of the defendant.*]

371.
Inquisition on writ of inquiry (*k*).

—— to wit. An inquisition taken at [*Here describe the place at which the writ was executed; as thus:*]
the Sheriff's Office in Red Lion Square, near Holborn, in the county of Middlesex; *Or,*
the Secondaries' Office, No 5, Basinghall Street, in the city of London; *Or,*
the house of ——, commonly called or known by the name or sign of ——, in —— Street, at ——, in the county of ——;
on the —— day of ——, in the year of Our Lord, 187—, before me, X. Y., esquire, Sheriff of the county [*or as may be*] aforesaid, by virtue of a writ of Our Sovereign Lady the Queen to me, the said Sheriff, directed, and to this inquisition annexed, to inquire of certain matters in the said writ specified by the oath of [*Here insert the names of the jurors who sat on the inquest*], good and lawful men of my bailiwick,
[*If an order has been made to have the writ executed before a special jury, add:*] qualified to serve as special jurors, taken from the special jury book,
who being charged and sworn upon their oath, say that the value of the chattels in the said writ mentioned is £——, and that A. B. in the said writ named hath sustained damages to the sum of £—— by reason of the detention of the said chattels [*Or,* say that A. B. in the said writ named hath sustained damages to the sum of £—— by reason of the matters in the said writ mentioned]. In witness whereof as well, I, the said Sheriff, as the said jurors, have set our seals to this inquisition the day and year above written.

(*h*) Cons. Ord. III. rules 2, 5; and see R. S. C. Ord. IV.; R. S. C. Feb. 1876, rule 3; and R. S. C. Ord. XLII. 11.

(*k*) As to the execution of the writ, see Chitty's Arch. 1001—1003. The inquisition is engrossed on parchment, and signed and sealed in the name of the sheriff and by the jurors, and annexed to the writ; *Ibid.* 1003.

372. Sheriff's return (*l*).

The execution of this writ appears in the inquisition hereunto annexed.

The answer of X. Y., esquire, Sheriff.

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373. Motion paper for order for sheriff to return writ (*m*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff, that the Sheriff of —— may be ordered within —— (*n*) days after service of the order to be made hereon upon him or his under sheriff or deputy (*o*) to return the writ of inquiry issued in this action to assess the value of goods and damages [*Or*, to assess damages] under the judgment entered in this action and dated the —— day of ——, 187—, which writ was returnable on the —— day of ——, 187—.

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374. Summons to stay judgment on writ of inquiry (*u*).

Formal parts: see post No. 881.

on the part of the defendants, that final judgment in this action may not be entered until after the —— day of ——, 187—.

(*l*) The return is indorsed on the writ. The writ and return with the inquisition may be obtained at the sheriff's office after the expiration of four days from the return day named in the writ; Chitty's Arch. 1003.

(*m*) As to the general course of proceeding to compel the sheriff to return the writ, see Dan. Pr. 394. For form of order, see Seton, ed. 3, 1230, No. 1. As to the service of the order, see *post*, note (*g*) to No. 1264; Chitty's Arch. 627. As to enforcing the order by attachment, see Chitty's Arch. 632—635. For forms of notice of motion to attach the sheriff for disobeying the order, and of writ of attachment, see *post* Nos. 1375 *et seq.*

(*n*) If the order is on the sheriffs of London or the sheriff of Middlesex, the time is four days; in other cases, eight days; Reg. Gen. H. T. 1853, rule 130.

(*o*) If the order is upon the sheriffs of London, say "upon them or their secondaries."

(*u*) If the sheriff has not certified upon the writ under the stat. 1 Wm. IV. c. 7, s. 1, that final judgment ought not to be entered until after the defendant shall have had an opportunity of applying to the Court to set aside the execution of the writ, and the defendant, though desirous of applying to the Court to set aside the execution of the writ, is not in a position to do so before final judgment is entered, by reason of there being no sitting of the Court to which such application should be made, he should apply by summons to stay the entering of final judgment until a time by which he will have had an opportunity of applying to set aside the execution of the writ; 1 Wm. IV. c. 7, s. 1; and see Chitty's Arch. 1003, 1004. If an order is refused and final judgment is entered, the defendant may still apply to the Court to set aside the judgment and grant a new writ of inquiry; 1 Wm. IV. c. 7, s. 4. For form of application, see *post* No. 378.

375.

Notice of motion to set aside inquisition, and grant a new writ of inquiry (*v*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*Or*, of the defendant] that the execution of the writ of inquiry executed before the Sheriff of ——, to assess the value of goods and damages [*Or*, to assess damages] under the judgment entered in this action and dated the —— day of ——, 187—, may be set aside, and that a new writ of inquiry may be directed to the said Sheriff to assess the value of goods and damages [*Or*, to assess damages] under the said judgment.

376.

Final judgment in default of appearance after assessment of value or damages under writ of inquiry (*w*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. and C. D. . . Plaintiffs,
and
E. F. and G. H. . . Defendants.

30th November, 1876.

The defendants not having appeared to the writ of summons

(*v*) It does not seem quite clear within what time this motion should be made; under the old practice it might have been made "within four days after the return day of the writ, or, it seems, at any time before final judgment signed;" Chitty's Arch. 1003, 1004, citing *Denny* v. *Trapnell*, 3 Wils. 878; perhaps under the new practice it should by analogy to a motion for a new trial be made within four days after the inquiry, or on the first subsequent day on which a Court to which the application may be made shall actually sit to hear motions, where the inquiry is held during the sittings of the Court; or within the first four days of the next following sittings, where the inquiry is held in vacation; see R. S. C. Ord. XXXIX. 1*a* (R. S. C., Dec. 1876, rule 6). As to the course which the defendant should adopt in order to prevent judgment being entered before he is able to make this application, see note (*u*) to No. 374. As to the course which he should adopt where he is not able to prevent judgment being entered before making the application, see *post*, note (*y*) to No. 378. The application to set aside the inquisition and have a new inquiry, is looked upon as on the same footing with an application for a new trial; Chitty's Arch. 1004. As to the causes for which the Court will grant a new trial or inquiry, see Chitty's Arch. 318, 1004, 1518 *et seq.*; misdirection of the presiding officer at the inquiry or the improper admission or rejection of evidence will not be a ground for setting aside the inquisition and granting a new inquiry, unless, in the opinion of the Court to which application is made, some substantial wrong or miscarriage has been thereby occasioned; and if it appear to the Court that such wrong or miscarriage affects part only of the matter in controversy, it may direct final judgment to be entered as to part, and direct a new inquiry as to the other part only; see R. S. C. Ord. XXXIX. 3. If the application is by the plaintiff, the notice of motion may be served by being filed; Ord. XIX. 6, 29.

(*w*) See the form, R. S. C. App. (D), No. 3. If the writ was executed in

herein, and a writ of inquiry dated ——, 187—, having been issued directed to the Sheriff of ——, to assess the value of the chattels and the damages [*Or*, to assess the damages] which the plaintiff was entitled to recover, and the said Sheriff having by his return, dated the —— day of ——, 187—, returned that the value of the said chattels has been assessed at £——, and the said damages at £—— [*Or*, returned that the said damages have been assessed at £——], it is adjudged that the plaintiff recover £—— and costs to be taxed.

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377. Final judgment where damages assessed otherwise than under writ of inquiry (*x*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

—— day of ——, 187— [*Date of entering judgment*].

The defendant not having appeared to the writ of summons herein, and the damages which the plaintiff was entitled to recover

vacation, and the sheriff has certified upon the writ under 1 Wm. IV. c. 7, s. 1, that judgment ought not to be entered until the defendant shall have had an opportunity of applying to the Court to set aside the execution of the writ, the judgment cannot be entered until after the first day in the next sittings on which the Court to which the application should be made has actually sat to hear motions. If the writ was executed in vacation, and the sheriff has not certified as above mentioned, but a Judge has ordered under 1 Wm. IV. c. 7, s. 1, that judgment shall not be entered until a day to be named in the order, the judgment cannot be entered until that day. If the action is proceeding in London, the judgment will be entered in the Registrar's office; if it is proceeding in a district registry, the judgment will be entered in the district registry; Sup. Ct. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 64; R. S. C. Ord. XXXV. 1*a* (R. S. C. June, 1876, rule 12). For the purpose of entering final judgment, the interlocutory judgment, the sheriff's return and inquisition and two forms of final judgment must be produced to the proper officer; R. S. C. Ord. XLI. 5. Final judgment will then be entered in the manner pointed out, *ante* No. 350, note (*b*). The judgment will be dated as of the day when the documents above mentioned are left with the officer for the purpose of entering judgment; R. S. C. Ord. XLI. 3. The fee on entering judgment is 10*s.* on the lower scale, and £1 on the higher scale; Ord. as to Court Fees, Oct. 1875, Sched.; Wilson, 506; this fee is payable by a stamp either impressed or adhesive; Ord. as to Fees, April, 1876, Sched.; Wilson, 522.

(*x*) See R. S. C. Ord. XIII. 6; and *ante* No. 358, and notes thereto. As to the mode in which judgment is entered, see *ante* No. 350, note (*b*). On entering the judgment, the interlocutory judgment, the order as to the

having been ordered to be ascertained before [*Here specify the mode in which the damages were ordered to be assessed, as:*] a judge and jury, and it appearing by the certificate of the associate [*or as may be, according to the mode adopted*] that the said damages have been assessed at £——, it is adjudged that the plaintiff recover £—— and costs to be taxed.

378.

Notice of motion to set aside inquisition, and to vacate judgment entered thereupon, and to set aside execution (if any), and to grant a new writ of inquiry (*y*).

Formal parts: see post No. 1571.

on the part of the defendants, that the execution of the writ of inquiry executed before the Sheriff of —— to assess the value of goods and damages [*Or*, to assess damages], under the judgment entered in this action on the —— day of ——, 187— [*Date of interlocutory judgment*], may be set aside; and that the judgment entered in this action on the —— day of ——, 187— [*Date of final judgment*], may be vacated;

[*If execution has been issued on the final judgment, add:*] and that execution of the writ of —— issued on the —— day of ——, 187—, upon the said judgment entered on the —— day of ——, 187— [*Date of final judgment*] may be stayed or set aside;

And that a new writ of inquiry may be directed to the said Sheriff to assess the value of goods and damages [*Or*, to assess damages] under the said judgment entered on the —— day of ——, 187— [*Date of interlocutory judgment*].

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mode of assessing damages, and the certificate of the associate or other document showing the amount at which damages have been assessed, must be produced to the officer by whom the judgment is entered, and the judgment will be dated as of the day when such documents are so left; R. S. C. Ord. XLI. 3. As to the fee payable on entering the judgment, see note (*w*), to last form.

(*y*) Where a writ of inquiry has been executed in vacation, and final judgment entered before the defendant had an opportunity of applying to the Court to set aside the execution of the writ and to grant a new writ, the defendant should apply to the Court under 1 Wm. IV. c. 7, s. 4, to set aside the execution of the writ of inquiry, to vacate the judgment entered, to stay or set aside execution (if any) issued on such judgment, and to grant a new writ of inquiry. It seems that such application ought to be made within the first four days of the next sittings after the execution of the writ; see R. S. C. Ord. XXXIX. 1*a* (R. S. C. Dec. 1876, rule 6), and note (*v*) to No. 375 *ante*. The application is looked upon as on the same footing with an application for a new trial; see note (*v*) to No. 375 *ante*.

SECTION IV.—PLAINTIFF'S PROCEEDINGS IN AN ACTION FOR A DEBT OR LIQUIDATED DEMAND, AND ALSO FOR THE DETENTION OF GOODS AND PECUNIARY DAMAGES OR PECUNIARY DAMAGES ONLY (*o*).

SECTION V.—PLAINTIFF'S PROCEEDINGS IN AN ACTION FOR THE RECOVERY OF LAND (*p*).

(*o*) Where the action is brought to recover a debt or liquidated demand in money, and also to recover chattels and damages, or damages only, the plaintiff cannot enter judgment by default for want of appearance, but he must, whether the sole defendant or all the defendants make default in appearing, or whether some appear and others make default, file an affidavit of service of the writ, and then proceed as if all the defendants had appeared; R. S. C. Ord. XIII. 9. As to any defendant who has made default in appearing, the statement of claim will be delivered by filing it with the Record and Writ Clerk or with the district registrar; R. S. C. Ord. XIX. 6, 29. If the defendant or defendants making default in appearance do not, within the time allowed for delivering a defence or demurrer, appear and deliver a defence or demurrer, then if the sole defendant or all the defendants thus make default, the plaintiff may enter final judgment for the debt or liquidated demand and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and may proceed to ascertain the value and damages, or damages, by means of a writ of inquiry, or in such other manner as the Court or a Judge shall direct; R. S. C. Ord. XXIX. 6; but if some only of the defendants have thus made default, the plaintiff should set the action down on motion for judgment against the defaulting defendants, either immediately upon default in delivering a defence, or at the same time that he enters it for trial, or sets it down on motion for judgment, against the other defendants; R. S. C. Ord. XXIX. 11.

(*p*) In an action for the recovery of land, if no appearance be entered within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff may enter a judgment that the person whose title is asserted in the writ recover possession of the land, or of the part thereof to which the defence does not apply; R. S. C. Ord. XIII. 7. If there are several defendants to the action, one or more of whom appear, and others of whom make default in appearing, the plaintiff cannot enter judgment against those who make default in appearing in respect of land in respect of which those who appear, defend; for in no case is judgment for the recovery of the possession of land given against a person; R. S. C. Ord. XIII. 7; *Ibid.* Ord. XXIX. 7; and R. S. C. App. (D), form 2; but the plaintiff must file an affidavit of service of the writ on those who do not appear, and must then proceed as if they had all appeared; R. S. C. Ord. XIII. 9. The statement of claim in such case will be properly delivered to those who make default in appearing by being filed with the Record and Writ Clerk or with the district registrar; R. S. C. Ord. XIX. 6, 29. If the defendant or defendants who have made default in appearing do not, within the time allowed for delivering a defence or demurrer, appear and deliver a defence or demurrer, still the plaintiff cannot enter judgment against them in respect of land, in respect whereof any other defendant defends, but the plaintiff

379.

Judgment for recovery of whole of land mentioned in writ (*q*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

day of ——, 187— [*Date*]

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned.

380.

Judgment for the recovery of part of the land mentioned in the writ (*r*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

—— day of ——, 187— [*Date*].

The defence of the defendants, who have appeared to the writ of summons herein being limited to [*here describe the part of the property to which the defence is limited*], part of the land in the said writ mentioned, it is this day adjudged that the plaintiff recover possession of [*here describe the property to which the defence does not extend*], being the residue of the land in the said writ mentioned.

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must set down the action on motion for judgment against such defaulting defendants, at the same time when the action is entered for trial or set down on motion for judgment against those defendants who appear and defend; R. S. C. Ord. XXIX. 11. The notice of motion for judgment will be properly served by being filed with the Record and Writ Clerk or with the district registrar; R. S. C. Ord. XIX. 6, 29; *Dymond* v. *Croft*, 3 Ch. D. 512; *Morton* v. *Miller*, 3 Ch. D. 516.

(*q*) This form is applicable only where the sole defendant or all the defendants fail to appear; for the course of proceeding where one or more defendants appear and defend for the whole land mentioned in the writ, see p. 201, note (*p*) *supra*; for the course of proceeding where the defence of the defendants who appear is limited to a part only of the land mentioned in the writ, see next form No. 380. As to the time for and mode of entering judgment, the date of the judgment, and the fee payable on entering the same, see *ante* No. 350, and note (*b*). A judgment for default of appearance for the recovery of the possession of land does not carry costs; see R. S. C. App. (D), form 2; this is in accordance with the old practice; Lush, Pr. p. 986. As to the effect by way of estoppel of judgment in an action for the recovery of land, see *Harris* v. *Mulkern*, 1 Ex. D. 31.

(*r*) This form is applicable only where no defendant who appears defends

SECTION VI.—PLAINTIFF'S PROCEEDINGS IN AN ACTION FOR THE RECOVERY OF LAND AND FOR MESNE PROFITS OR ARREARS OF RENT IN RESPECT OF THE PREMISES CLAIMED OR FOR DAMAGES FOR THE BREACH OF ANY CONTRACT UNDER WHICH THE PREMISES ARE HELD (*s*).

381. Statement o particulars c plaintiff's claim for re (*t*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

The following is a statement of the particulars of the plaintiff's claim in respect of arrears of rent of the land and premises mentioned in the writ of summons in this action :

Two years' rent of the said land and premises, from ——, 187—, to ——, 187—, at £50 per annum . . £100

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for the part of the land in respect whereof judgment is entered ; as to any part of the land in respect whereof any defendant appears and defends, the action proceeds against all the defendants, whether they have all appeared or not; see *ante*, p. 201, note (*p*). As to the time for and mode of entering judgment, the date of the judgment and the fee payable on entering the same, see *ante* No. 350, note (*b*). In addition to the documents there mentioned, the notice given by the defendants who have appeared limiting their defence to part only of the land, must be produced to the officer by whom judgment is entered, unless the defence is limited by the memorandum of appearance ; in which case, if judgment be signed in London, the Record and Writ Clerk's certificate of that fact must be produced to the Registrar. As to costs, see note (*q*) to last form.

(*s*) Where the plaintiff has indorsed upon a writ for the recovery of land, a claim for mesne profits or arrears of rent in respect of the premises claimed, or for damages for the breach of a contract under which the premises are held (which are the only causes of action which may, unless by leave of the Court or a Judge, be joined with a claim for the recovery of land ; R. S. C. Ord. XVII. 2), and the defendant or all the defendants fail to appear within the time limited, the plaintiff may enter judgment for the land as mentioned in R. S. C. Ord. XIII. 7 (see p. 201, note (*p*) *supra*) ; and as to his other claim, may, if the same be for a debt or liquidated demand, proceed under R. S. C. Ord. XIII. 5 (see p. 182, note (*g*) *supra*) ; or, if it be for unliquidated damages, proceed as mentioned in R. S. C. Ord. XIII. 6 (see p. 184, note (*k*) *supra*) ; R. S. C. Ord. XIII. 8.

(*t*) This statement is required to be filed by R. S. C. Ord. XIII. 5, for the action not being an action "merely to recover a debt or liquidated demand in money," the writ of summons cannot be specially indorsed with the particulars of the amount sought to be recovered, under Ord. III. 6 ; the plaintiff must therefore proceed under Ord. XIII. 5, 8. It is, however, only

382. Final judgment for the recovery of land, and of liquidated amount for arrears of rent (*u*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

—— day of ——, 187— [*Date*].

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned; and it is also adjudged that the plaintiff recover against the defendant £100 and costs to be taxed.

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where the sole defendant or all the defendants make default in appearing that he can proceed under those rules; where some of the defendants appear and the others make default, he must proceed under Ord. XIII. 9, in the same manner as if all the defendants had appeared, and instead of filing particulars of his claim under Ord. XIII. 5, he must deliver a statement of claim to the defaulting defendants, by filing it with the proper officer; R. S. C. Ord. XIX. 6, 29.

(*u*) This form is applicable only where the sole defendants or all the defendants make default in appearing; where some appear and some make default, the plaintiff must file an affidavit of service on those who make default, and proceed as if all the defendants had appeared; R. S. C. Ord. XIII. 9. The statement of claim may be delivered to the defendants who have not appeared by being filed with the Clerk of Records and Writs or with the district registrar; Ord. XIX. 6, 29. If such defaulting defendants do not within the time allowed for delivering a defence or demurrer appear and deliver a defence or demurrer, the plaintiff may enter final judgment against them for the amount of the arrears of rent, and may issue execution on such judgment, without prejudice to his right to proceed with the action against the other defendants; R. S. C. Ord. XXIX. 3, 8; and as regards the claim for the recovery of the land, the plaintiff must set the action down on motion for judgment against the defaulting defendants at the same time when it is entered for trial or set down on motion for judgment against the other defendants; R. S. C. Ord. XXIX. 11. Where, however, the sole defendant or all the defendants make default in appearing the form in the text may be used; or the plaintiff may enter separate judgments, one for the recovery of the land, in the form *ante* No. 379, and the other for the recovery of the arrears of rent in the form *ante* No. 352. The advantage of the latter course is that the plaintiff may then enter judgment for the recovery of the land immediately upon default in appearance; whereas he cannot enter a judgment in the form in the text until after the expiration of eight days from the filing of the statement of particulars; see R. S. C. Ord. XIII. 5, and *ante* No. 352, note (*j*). The disadvantage, on the other hand, of entering two judgments, is that the plaintiff will not recover the costs of the judgment for the recovery of land; see note (*q*) to No. 379 *ante*, and the form No. 2 in Appendix (D) to the Rules of the Supreme Court; whereas the judgment for the recovery of arrears of rent carries costs, see form No. 1 in the same Appendix D. The time for entering the judgment in the

383. Final judgment for the recovery of land, and interlocutory judgment for the recovery of mesne profits, or damages for breach of contract (*v*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— . . . Defendant.

—— day of ——, 187— [*Date*].

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned; and it is also adjudged that the plaintiff recover against the defendant damages to be assessed.

384. Subsequent proceedings down to final judgment for recovery of damages assessed.

[*Same as Nos.* 358 *to* 378 *ante.*]

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text is, as above mentioned, after the expiration of eight days from the filing of the statement of particulars. As to the mode of entering judgment, the date of the judgment, and the fee payable on entering the same, see *ante* No. 350, note (*b*). In addition to the documents there mentioned, where judgment is entered in London, the Record and Writ Clerk's certificate of the filing of the statement of the particulars of the plaintiff's claim must be produced to the Registrar.

(*v*) This form is applicable only where the sole defendant or all the defendants make default in appearing; where some defendants appear and some make default, the plaintiff must file an affidavit of service on those who make default, and proceed as if all the defendants had appeared; R. S. C. Ord. XIII. 9. The statement of claim may be delivered to the defendants who have not appeared, by being filed with the Clerk of Records and Writs or with the district registrar; R. S. C. Ord. XIX. 6, 29. If such defaulting defendants do not within the time allowed to deliver a defence or demurrer, appear and deliver a defence or demurrer, the plaintiff may enter an interlocutory judgment against such defendants with respect to his claim for mesne profits or damages for breach of contract, and proceed with his action against the other defendants, and the damages which the plaintiff is entitled to recover from such defaulting defendants will, unless the Court or Judge shall otherwise direct, be assessed at the same time with the trial of the action or issues therein against the other defendants; R. S. C. Ord. XXIX. 5, 8; with respect to his claim for the recovery of land, the plaintiff cannot sign judgment against the defaulting defendants, but he must set the action down on motion for judgment against the defaulting defendants, at the same time when it is entered for trial or set down on motion for judgment against the other defendants; R. S. C. Ord. XXIX. 11. But where the sole defendant or all the defendants make default in appearing, the form in the text may be used; or the plaintiff may enter separate judgments, one for the recovery of the land in the form, *ante* No. 379, the other an interlocutory judgment for the assessment of damages in the form, *ante* No. 354. The respective advantages and disadvantages of these respective courses are pointed out in note (*u*) to No. 382 *ante*. As to the time for and mode of entering judgment, the date of the judgment, and the fee payable on entering the same, see *ante* No. 350, note (*b*).

SECTION VII.—PLAINTIFF'S PROCEEDINGS WHERE THE WRIT OF SUMMONS IS INDORSED WITH A CLAIM FOR AN ACCOUNT UNDER R. S. C. ORD. III., RULE 8 (*w*).

385. Summons for an order for an account where writ indorsed under Ord. III., rule 8 (*x*).

Formal parts: see post No. 881.

on the part of the plaintiff, that an account may be taken of [*here specify the account required in accordance with the claim indorsed on the writ*].

SECTION VIII.—PLAINTIFF'S PROCEEDINGS IN ACTIONS BY THE 34TH SECTION OF THE SUPREME COURT OF JUDICATURE ACT, 1873, ASSIGNED TO THE CHANCERY DIVISION, WHERE NO ORDER FOR AN ACCOUNT IS MADE UNDER R. S. C. ORD. XV. (*y*).

(*w*) In default of appearance to a summons indorsed under Ord. III. rule 8, and even after appearance, unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions formerly usual in the Court of Chancery in similar cases, will be forthwith made upon the application of the plaintiff by summons, supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to such account; the application may be made at any time after the time for entering an appearance has expired; R. S. C. Ord. XV. rules 1, 2. Where the defendant does not appear, the application must be supported not only by the affidavit above mentioned, but also by an affidavit of service; R. S. C. Ord. XIII. 2; and by the certificate of the Record and Writ Clerk, that no appearance has been entered, if the action is proceeding in London; for form of affidavit of service, see *ante* No. 346.

(*x*) For form of order, see Seton, ed. 4, p. 8; the order is so framed as to render the hearing of the application the trial of the action. At the Rolls, where the account claimed is an executorship or administration account, the usual administration decree will be made, and not merely an order for accounts; *Pratt* v. *Browne*, M. R. at Chambers, 17 Dec. 1875. The summons may be served on the defendant personally notwithstanding that he has not appeared; R. S. C. Ord. LIII. 7; or it may be served upon him by being filed with the Record and Writ Clerk or with the district registrar; R. S. C. Ord. XIX. 6, 29; see *Dymond* v. *Croft*, 3 Ch. D. 512; *Morton* v. *Miller*, 3 Ch. D. 516.

(*y*) In actions assigned by the 34th section of the Act to the Chancery Division, where no order has been made under Ord. XV., in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, the action may proceed as if such party had appeared; R. S. C. Ord. XIII. 9. The statement of claim may be delivered to any defendant who does not appear, by being filed with the Record and Writ Clerk or with the district registrar; R. S. C. Ord. XIX. 6, 29. If the defendant or defendants making default in

Section IX.—Defendant's Proceedings to set aside a Judgment entered for Default of Appearance (*a*).

Formal parts: see post No. 1571 *or* 881.

386. Notice of motion or summons to set aside a judgment regularly entered for default of appearance (*b*).

on the part of the defendant, that the judgment entered in this action on the —— day of ——, 187— [*If there have been any* appearance, do not within the time allowed for delivering a defence or demurrer appear and deliver a defence or demurrer, the plaintiff may, if all the defendants make default, set down the action on motion for judgment; R. S. C. XXIX. 10; if some only of the defendants make default, the plaintiff may either set the action down at once on motion for judgment against the defaulting defendants, or may set it down against them at the time when it is entered for trial or set down on motion for judgment against the other defendants; R. S. C. Ord. XXIX. 11. The notice of motion for judgment is properly served on the defaulting defendants, by being filed with the Record and Writ Clerk or with the district registrar; R. S. C. Ord. XIX. 6, 29; *Dymond* v. *Croft*, 3 Ch. D. 512; *Morton* v. *Miller*, 3 Ch. D. 516.

(*a*) The Court or a Judge may set aside or vary a final judgment entered by the plaintiff for want of appearance, where the writ of summons is specially indorsed under Ord. III. rule 6, upon such terms as may seem just; R. S. C. Ord. XIII. 3; and generally any judgment by default entered under any of the Rules of the Supreme Court may be set aside by the Court or a Judge, upon such terms as to costs or otherwise, as such Court or Judge may think fit; R. S. C. Ord. XXIX. 14; see *Scott* v. *Royal Wax Candle Co.*, 1 Q. B. D. 404; *Watt* v. *Barnett*, 3 Q. B. D. 183. After a final judgment entered under the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), the Court or a Judge may under special circumstances set aside the judgment, and if necessary, stay or set aside execution, and may give leave to appear to the writ and to defend the action, if it shall appear to be reasonable to the Court or Judge so to do, and upon such terms as to the Court or Judge may seem just; 18 & 19 Vict. c. 67, s. 3.

(*b*) See note (*a*) *supra;* and see Chitty's Arch. 982, 988, 989. There should be no delay in making the application; but mere delay is not a sufficient answer to the application, unless by the delay some irreparable injury has been done to the plaintiff; *Atwood* v. *Chichester*, 26 W. R. 320. The application must be supported by an affidavit, which should disclose a good defence to the action upon the merits, besides explaining the circumstances under which judgment was allowed to go by default; *Watt* v. *Barnett*, 3 Q. B. D. 183; for form, see *post* No. 387. Under the old practice the plaintiff was not allowed to answer this affidavit by going into evidence to show that the defendant had no defence upon the merits; Chitty's Arch. 989. The application will in general only be granted upon the terms of paying the plaintiff's costs of the proceedings which it is sought to set aside, and the costs of the application, and upon such other terms as the Court or Judge may think proper in the particular case; in some cases the defendant will be ordered to bring money into Court, or to give security; *Watt* v. *Barnett*, 3 Q. B. D. 183.

subsequent proceedings upon such judgment, state them, as: and the writ of ——, issued on such judgment, on the —— day of ——, 187], may be set aside, and that the defendant may be at liberty to appear to and to defend this action.

387.
Affidavit in support (*c*).

Formal parts: see post No. 693.

1. The writ of summons in this action was issued on the —— day of ——, 187—, out of the Chancery Division of this honourable Court, and was served on the —— day of ——, 187—. On the —— day of ——, 187—, final [*Or*, interlocutory] judgment was entered for want of an appearance, and on [*Here state the subsequent proceedings in the action, if any have been taken*].

2. I [*Or*, The said defendant ——] did not enter an appearance to the writ of summons in this action, under the following circumstances: [*Here explain the circumstances under which judgment was allowed to go by default, and account for the delay (if any) in making the application*].

3. The plaintiff's claim in this action is for [*Here state the nature of the plaintiff's claim, and the facts upon which the applicant relies as affording a good defence to such claim*].

4. I am advised and verily believe that I have [*Or*, the said defendant has] a good defence to this action upon the merits.

5. [*Show means of knowledge.*]

388.
Notice of motion or summons to set aside judgment and subsequent proceedings for irregularity (*d*).

Formal parts: see post No. 1571 *or* 881.

on the part of the defendant, that the judgment entered in this action on the —— day of ——, 187— [*If there have been any subsequent proceedings upon such judgment, state them, as:*]

and the writ of inquiry issued on the —— day of ——,

(*c*) See note (*b*) to No. 386 *ante*.

(*d*) Non-compliance with any of the Rules of Court does not render the proceedings in an action void, but renders them liable to be set aside as irregular; R. S. C. Ord. LIX. An application to set aside the judgment and for leave to appear and defend, should be made only where the writ of summons is regular, and the defendant admits the jurisdiction of the Court; where there is an irregularity in the writ itself, or the writ before service ceased to be in force, or the defendant denies the jurisdiction of the Court, he should apply to set aside the writ of summons; see *ante* Nos. 315 to 321. The application to set aside the judgment and for leave to appear should be made promptly; see Chitty's Arch. 986, 987. It should be supported by an affidavit proving the irregularity; but under the old practice it was not necessary for the

187—, to assess damages under the said judgment, and the final judgment entered in this action on the —— day of ——, 187—, and the writ of *fieri facias* [*or as may be*] issued upon such judgment

may be set aside as irregular, on the ground that [*Here specify the irregularity, on the ground of which it is sought to set the judgment aside, as:*]

the writ of summons in this action was not duly served on the said defendant; *Or,*

the said judgment was entered before the expiration of the time limited by the writ of summons in this action for the said defendant to appear thereto;

and that the defendant may be at liberty to enter an appearance to the said writ of summons, and to defend this action; and that the plaintiff may be ordered to pay to the defendant his costs of this application to be taxed.

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389. Affidavit in support.

Formal parts: see post No. 693.

1. On the —— day of ——. 187—, the writ of summons in this action was issued out of the Chancery Division of this honourable Court [*State the subsequent proceedings in the action, showing how they were irregular, and show also that the application is made as soon as possible* (*e*)].

2. I am advised, and verily believe, that I have [*Or,* that the said defendant —— has] a good defence to this action on the merits (*f*).

3. [*Show means of knowledge.*]

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defendant to show a defence upon the merits; *Hall* v. *Scotson*, 23 L. J. (Exch.) 85. For form of affidavit, see *post* No. 389. The notice of motion or summons should specify the irregularity complained of; Chitty's Arch. 987. As to waiving the irregularity, see Chitty's Arch. 987.

(*e*) As to the time at which the application should be made, see Chitty's Arch. 986, 987.

(*f*) It does not seem to be necessary to show a good defence upon the merits, as it is where the judgment sought to be set aside is regular; see *per* Parke, B., in *Hall* v. *Scotson*, 23 L. J. (Exch.) 85; but it is advisable to make, at least, a general statement of this description.

Part II.—Where the Defendant appears to the Writ.

Section I.—Plaintiff's application to set aside the Appearance.

390.

Notice of motion or summons to set aside the appearance (*a*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff, that the appearance entered for the defendant A. B. to the writ of summons in this action, may be set aside, on the ground that [*Here specify the irregularity, on the ground of which it is sought to have the appearance set aside, as:*]

the address for service stated in the memorandum of the said appearance is illusory and fictitious (*b*); *Or*,

the said appearance was entered by and in the name of X. Y., who is neither the defendant nor a solicitor of the Supreme Court of Judicature (*c*);

And that the said appearance may be struck out of the cause book (*d*) kept by the Clerk of Records and Writs [*Or*, by the

(*a*) The notice of motion or summons must be served on the defendant to be affected thereby or his solicitor. Where it is sought to set aside the appearance on any other ground than that the address for service stated in the memorandum of appearance is illusory and fictitious, there is no difficulty as to the service of the notice or summons, which will be served in the ordinary way, viz. by being left at the address for service; see R. S. C. Ord. XIX. 6, referring to the old practice as to which, in Chancery, see Cons. Ord. III. rules 4, 6; and, at law, Reg. Gen. H. T. 1853, rules 165, 166; but where it is sought to set aside the appearance on the ground that the address for service stated in the memorandum thereof is illusory and fictitious, it would seem that the notice of motion or summons must be served upon the defendant personally or left at his place of residence, if he has entered an appearance in person; see Cons. Ord. III. 6; or if he has appeared by a solicitor, must be served upon the solicitor at his place of business; see Cons. Ord. III. 4; for the address for service being illusory and fictitious, it cannot be served by being left at the address for service, and the appearance cannot, before being set aside, be treated as void, so as to bring the case within the terms of R. S. C. Ord. XIX. 6; see R. S. C. LIX. The application should be made after the expiration of the time limited for entering an appearance, but before the plaintiff takes any step in the action after having become aware of the irregularity. It should be supported by an affidavit verifying the facts relied on; for form, see *post* No. 391.

(*b*) If the address for service stated in the memorandum of appearance be illusory or fictitious, the appearance may be set aside by the Court or a Judge upon the application of the plaintiff; R. S. C. Ord. XII. 9. As to service of the notice of motion or summons in this case, see *supra* note (*a*).

(*c*) For order in like case, see *Sparling* v. *Brereton*, V.-C. Wood, at Chambers, 24 Nov. 1865, Reg. Lib. B. 2373; and see *Sparling* v. *Brereton*, L. R. 2 Eq. 65.

(*d*) See R. S. C. Ord. V. 8; and *Ibid.*, Ord. XII. 11.

Registrar of the District Registery at ——] accordingly. And that the plaintiff may be at liberty to proceed in the same manner as if the said defendant A. B. had failed to appear to the writ of summons in this action; and that the said defendant A. B. may be ordered to pay to the plaintiff the costs of this application.

391.

Affidavit in support.

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, the writ of summons in this action was regularly issued out of the Chancery Division of this honourable Court against the above-named defendant —— at the suit of the above-named plaintiff; and the said writ was duly served on the said defendant —— on the —— day of ——, 187—.

2. [*Here state the entry of an appearance for the defendant, and show how the same is irregular, thus:*] On the —— day of ——, 187—, a memorandum of appearance for the said defendant was delivered to the Clerk of Records and Writs [*Or*, to the Registrar of the District Registry at ——], which memorandum purported to be signed by X. Y. as solicitor for the said defendant —— [*Or*, by the said C. D. the defendant in person], and contained a statement that the address for service of the said X. Y. [*Or*, of the said C. D.] is at No. 55, in —— Street, in the city of ——.

3. The said address for service is illusory and fictitious. There is but one street in the said city of ——, named —— Street. There is no house in the said —— Street, numbered 55. There are forty houses only in the said street, which are numbered from 1 to 40 inclusively.

SECTION II.—PLAINTIFF'S APPLICATION FOR LIBERTY TO ENTER JUDGMENT, NOTWITHSTANDING APPEARANCE, WHERE THE WRIT IS ENDORSED UNDER R. S. C., ORD. III., RULE 6 (*j*).

392.
Summons for liberty to enter final judgment, notwithstanding appearance (*k*).

Formal parts: see post No. 881.

on the part of the plaintiff, that he may be at liberty, notwithstanding that the defendant has appeared, to enter final judgment

(*j*) Where in an action brought to recover a debt or liquidated demand in money merely, the plaintiff has, under Ord. III. 6, specially indorsed the writ of summons with the particulars of the amount sought to be recovered, and the defendant appears thereto, the plaintiff may apply for liberty to sign final judgment for the amount indorsed on the writ, together with interest, if any, and costs; R. S. C. Ord. XIV. 1, 2 (R. S. C. May, 1877, rule 3). The application must be supported by an affidavit, verifying the cause of action, and stating that in the deponent's belief there is no defence to the action; R. S. C. Ord. XIV. 1. The defendant may show cause against the application by offering to bring into Court the sum indorsed on the writ; R. S. C. Ord. XIV. 3; or by an affidavit showing that he has a good defence to the action on the merits, or disclosing such facts as the Court or Judge may deem sufficient to entitle him to defend; R. S. C. Ord. XIV. 1; and it is not necessary that the defendant should prove a good defence upon the merits; it is sufficient if he shows a reasonable probability that he may be able to substantiate a defence; *Harrison* v. *Bottenheim*, 26 W. R. 362. The affidavit must further state whether the defence alleged goes to the whole or to part only of the plaintiff's claim, and if to part only, to what part; R. S. C. Ord. XIV. 3. The Judge may order the defendant to attend and be examined on oath, or to produce any books or documents; R. S. C. Ord. XIV. 3. Upon the hearing of the application the Court or Judge may give leave to defend, either unconditionally, or subject to such terms as the Court or Judge may think fit; R. S. C. Ord. XIV. 6; or the Court or Judge may empower the plaintiff to enter judgment for the whole amount indorsed on the writ with interest (if any) and costs; R. S. C. Ord. XIV. 1; or for such part of his claim as the defence set up by the defendant does not apply to, or as is admitted to be due: the defendant being allowed to defend as to the residue of the plaintiff's claim; R. S. C. Ord. XIV. 4; or if it appear to the Judge that any defendant has a good defence to, or ought to be permitted to defend, the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff may be empowered to enter final judgment against the latter, and to issue execution upon such judgment without prejudice to his right to proceed with his action against the former defendant; R. S. C. Ord. XIV. 5. The power to direct judgment to be entered notwithstanding appearance, is only intended to be exercised where on the defendant's own showing he has no defence; *Lloyds Bank* v. *Ogle*, 1 Exch. D. 262; where a defendant shows reason to suppose that he has a substantial defence, he ought not to be compelled to pay money into Court; *Lloyds Bank* v. *Ogle, ubi supra; Runnacles* v. *Mesquita*, 1 Q. B. D. 416; and see *Harrison* v. *Bottenheim*, 26 W. R. 362.

(*k*) The application must be by summons, which must be returnable not less than two clear days after service; R. S. C. Ord. XIV. 2. For form of order, see Seton, ed. 4, p. 8.

in this action against the defendant for the sum of £——, being the amount endorsed on the writ of summons in this action

[*If interest is claimed, add :*] together with interest, and for the costs of this action to be taxed.

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393. Affidavit in support (*l*).

Formal parts ; see post No. 693.

1. The defendant —— is justly and truly indebted to me [*Or,* to —— the plaintiff] in the sum of £——, for [*State consideration*]. The particulars of the said claim appear in the endorsement on the writ of summons in this action. The said particulars are true and correct.

2. I verily believe that there is no defence to this action.

3. [*If the affidavit is made by a person other than the plaintiff, show means of knowledge*].

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394. Affidavit in reply (*m*).

Formal parts : see post No. 693.

1. I am advised and believe that I have a good defence to the whole of the plaintiff's claim in this action upon the merits.

[*Or,* I am advised and believe that as to £——, being part of the plaintiff's claim in this action, I have a good defence to this action upon the merits].

2. [*Here state the facts on which the defendant relies as affording a defence to the plaintiff's claim, or to part thereof, or as the case may be*].

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395. Final judgment where order made under R.S.C., Ord. XIV. (*n*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . . . Plaintiff,
and
—— and —— . . . Defendants.

—— day of ——, 187— [*Date of entering judgment*].

The defendants having appeared to the writ of summons in this

(*l*) This affidavit must be made by the plaintiff, or by some person who can swear positively to the debt or cause of action ; R. S. C. Ord. XIV. 1 (R. S. C. May, 1877, rule 3). A copy of the affidavit must accompany the summons ; *Ibid.*

(*m*) As to the contents of the affidavit in reply, see R. S. C. Ord. XIV, 1, 3 ; and *ante* p. 212, note (*j*). The Court or Judge has a discretion to allow the plaintiff to reply to the defendant's affidavit ; *Davis* v. *Spence*, 1 C. P. D. 719.

(*n*) See Seton, ed. 4, p. 8. Where the writ of summons issued out of the London office, judgment will be entered by the Registrar ; where the writ issued out of a district registry judgment will be entered by the district registrar ; see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 64 ; R. S. C. Ord. XXXV. 1*a* (R. S. C. June, 1876, rule 12). For the purpose of entering judgment, the plaintiff must produce to the officer

action, and the plaintiff having on the —— day of ——, 187—, obtained an order under Ord. XIV., of the rules of the Supreme Court, for leave to enter final judgment [*Here recite the order, as :*]

for the sum of £——, the amount endorsed on the writ of summons, together with interest and costs. *Or,*

for the sum of £——, being part of the plaintiff's claim in this action. *Or,*

against the said defendant C. D. for the sum of £——, being ——.

It is this day adjudged that the plaintiff recover against the said defendants [*Or,* against the said defendant C. D.] the sum of £—— [*If so, add :*] and costs to be taxed.

SECTION III.—PLAINTIFF'S APPLICATION FOR ORDER FOR AN ACCOUNT, WHERE THE WRIT OF SUMMONS IS ENDORSED UNDER R. S. C., ORD. III., RULE 8 (*o*).

396. Summons for order for an account where writ indorsed under Ord. III. rule 8 (*p*).

[*Same as* No. 385 *ante.*]

SECTION IV.—PLAINTIFF'S PROCEEDINGS WHERE THE DEFENDANT HAS PAID MONEY INTO COURT.

397. Summons for payment of money out of Court (*q*).

Formal parts : see post No. 881.

on the part of the plaintiff, that the sum of £——, cash in Court, to the credit of this cause, B. *v.* D., 187—, B. ——, may be paid to A. B. the plaintiff.

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the original writ of summons and the order giving leave to enter judgment ; R. S. C. Ord. XLI. 5. For the mode of entering judgment, see R. S. C. Ord. XLI., and *ante* No. 350, note (*b*). The judgment will be dated as of the day when the documents are left with the officer ; R. S. C. Ord. XLI. 3. The fee on entering judgment is £1 on the higher scale and 10*s.* on the lower scale, payable by a stamp impressed or adhesive ; Ord. as to Court Fees, Octr. 1875, Sched. ; Ord. as to Fees, April, 1876, Sched. ; Wilson, 506, 522.

(*o*) This application may be made as well where the defendant has appeared as where he has made default in appearance. See R. S. C. Ord. XV. and No. 385 *ante,* and notes (*w*) and (*x*).

(*p*) The application must be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to such account ; it may be opposed by the defendant by showing that there is some preliminary question to be tried ; R. S. C. Ord. XV. rules 1, 2.

(*q*) See *ante* p. 164, note (*a*), and R. S. C. Ord. XXX. 1, 2. By R. S. C. Ord. XXX. rule 3, money paid into Court by the defendant under rule 1, may be paid out to the plaintiff or his solicitor on the written authority of the plaintiff ; notwithstanding this, the Chancery Pay-master will not pay money out of Court without an order ; see Chancery Funds Consolidated Rules, 1874, rule 36. For the mode of obtaining money out of Court, see

Formal parts : see ante No. 21.

Take notice that the plaintiff accepts the sum of £——, paid into Court by the defendant ——, in satisfaction of the claim in respect of which it is paid in [*Or*, in satisfaction of his entire cause of action (*s*)].

398. Notice accepting sum paid into Court by defendant (*r*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . . . Plaintiff,
and
—— . . . . . Defendant.

—— day of ——, 187— [*date*].

399. Judgment for costs, where the amount paid in is accepted in satisfaction of the entire cause of action (*t*).

The defendant having paid into Court in this action the sum of £——, by way of satisfaction or amends, and the plaintiff having by his notice, dated the —— day of ——, 187—, accepted the said sum of £——, in satisfaction of his entire cause of action, and the plaintiff's costs of this action having been taxed and certified at the sum of £——, and the defendant not having paid the said sum of £——, although forty-eight hours have elapsed after the said taxation, it is this day adjudged that the plaintiff recover against the said defendant the sum of £—— for his costs aforesaid.

Chancery Funds Consolidated Rules, 1874, rule 38 ; and *post* note (*b*) to No. 2030.

(*r*) The plaintiff may within four days after receipt of notice of payment into Court by the defendant of a sum of money by way of satisfaction or amends, or, if such payment in is first stated in a defence delivered, then may before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in, and in that case he must give notice thereof to the defendant ; R. S. C. Ord. XXX. 4, and Appendix (B), form No. 6.

(*s*) For the plaintiff's further proceedings, where he accepts the sum paid into Court in satisfaction of his entire cause of action, see *post* No. 399, and note (*t*).

(*t*) In case the sum paid into Court by the defendant is accepted by the plaintiff in satisfaction of his entire cause of action, the plaintiff may tax his costs, and, in case of non-payment within forty-eight hours, may enter judgment for his costs so taxed ; R. S. C. Ord. XXX. 4 ; provided of course that the sum so accepted by the plaintiff is sufficient to carry costs ; see 21 Jac. 1, c. 16, s. 6 ; 3 & 4 Vict. c. 24, s. 2 ; 30 & 31 Vict. c. 142, s. 5 ; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 67 ; *Garnett* v. *Bradley*, 2 Exch. D. 349 ; overruling *Parsons* v. *Tinling*, 2 C. P. D. 119. On entering judgment there must be produced to the officer the defendant's notice of payment in, a duplicate of the plaintiff's notice of acceptance, and the taxing master's certificate. As to the office in which the judgment is entered, the mode of entering judgment, the date of the judgment, and the fee payable on entering the same, see *ante* No. 350, note (*b*).

SECTION V.—PLAINTIFF'S APPLICATION FOR A STATEMENT OF THE NAMES OF THE CO-PARTNERS IN THE DEFENDANT FIRM.

400.

Summons for statement of names of persons who are co-partners in the defendant firm.

[*Same as* No. 197 *ante.*]

SECTION VI.—PLAINTIFF'S APPLICATION THAT THE ACTION MAY BE RETAINED IN A DISTRICT REGISTRY.

401.

Notice of motion or summons that action may proceed in District Registry (*w*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff, that notwithstanding that the defendant C. D. has entered an appearance in London [*Or*, has served a notice of his desire that this action should be removed to London], this action may be ordered to proceed in the District Registry at ——.

(*w*) When the writ is issued out of a district registry, but the defendant or any of the defendants appear in London, or a defendant who has appeared in the district registry gives notice of his desire to remove the action to London, the action will then proceed in London; R. S. C. Ord. XII. 5; Ord. XXXV. 11, 12; but if the Court or Judge is satisfied that the defendant so appearing in London or giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the action proceed in the district registry notwithstanding such appearance in London or such notice; R. S. C. Ord. XII. 5; Ord. XXXV. 12.

CHAPTER VII.

THE PLEADINGS IN AN ACTION (*a*).

Section I.—The Statement of Claim (*b*).

(*a*) Every pleading must be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate allegation, and dates, sums, and numbers being expressed in figures and not in words; R. S. C. Ord. XIX. 4. No pleading need be signed by counsel; *Ibid.*; though it is desirable that every statement of claim should be so signed; *Duckitt* v. *Jones*, W. N. (1876) 17; 33 L. T. 777. Every pleading must be marked on the face with the date of the day on which it is delivered, with the reference to the record, the division to which, and the Judge to whom, the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor; R. S. C. Ord. XIX. 7. Every pleading which contains less than ten folios of seventy-two words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, must be printed; R. S. C. Ord. XIX. 5, and R. S. C. June, 1876, rule 9. Pleadings which are required to be printed must be printed on cream-wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide; R. S. C. Ord. LVI. 2. Every pleading in an action must be delivered between the parties; R. S. C. Ord. XIX. 7; where a party has appeared either in person or by solicitor, a pleading may be delivered to him or to his solicitor by being left at the address for service for him or for his solicitor; R. S. C. Ord. XIX. 6, referring to the old practice, as to which, see Cons. Ord. III. 4, 6; but if a party has not appeared, a pleading may be delivered to him by being filed with the Record and Writ Clerk, where the action is proceeding in London, or with the district registrar where the action is proceeding in a district registry; R. S. C. Ord. XIX. 6, 29. No pleading may be delivered in the long vacation, unless directed by the Court or a Judge; R. S. C. Ord. LVII. 4; nor is the time of the long vacation reckoned in the computation of the times appointed or allowed for delivering any pleading, unless otherwise directed by the Court or a Judge; R. S. C. Ord. LVII. 5.

(*b*) Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of claim, the plaintiff must, and in any case the plaintiff may, if he think fit, deliver to the defendant a statement of his complaint and of the relief or remedy to which

402.

Summons for further time to deliver statement of claim (*c*).

Formal parts: see post No. 881.

on the part of the plaintiff, that he may have —— days further

he claims to be entitled; R. S. C. Ord. XIX. 2; and Ord. XXI. 1 (*b*). But if a plaintiff delivers a statement of claim without being required to do so, the Court or a Judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper; R. S. C. Ord. XXI. 1 (*c*); and see R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 18. The statement of claim must be as brief as the nature of the case will admit; R. S. C. Ord. XIX. 2; and must contain as concisely as may be a statement of the material facts on which the plaintiff relies, but not the evidence by which such facts are to be proved; *Ibid.*, rule 4; *Davey* v. *Garrett*, 26 W. R. 225; but the plaintiff need not allege any matter of fact which the law presumes in his favour, or as to which the burthen of proof lies on the defendant; *Ibid.*, rule 28. Where the plaintiff seeks relief in respect of several distinct claims, or causes of complaint founded on separate and distinct facts, such facts must be stated as far as may be separately and distinctly; R. S. C. Ord. XIX. 9. The statement of claim must state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief; R. S. C. Ord. XIX. 8. It is advisable always to insert a general claim for relief, as where this is not done the plaintiff will be restricted to the relief which he has specifically claimed; *Holloway* v. *York*, 25 W. R. 627. The facts stated in the statement of claim need not be assigned to any particular claim for relief; so long as they tend to show that the plaintiff is entitled to any one of the reliefs claimed, or (if there be a general claim for relief) to any relief at all, the paragraph containing them is not demurrable; *Watson* v. *Hawkins*, 24 W. R. 884. Where the plaintiff's claim is for discovery only, the statement of claim must show it; R. S. C. Ord. XIX. 8. Wherever the contents of any document are material, it will be sufficient to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material; R. S. C. Ord. XIX. 24; wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it will be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred; *Ibid.*, rule 25; wherever it is material to allege notice to any person of any fact, matter, or thing, it will be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material; *Ibid.*, rule 26; and wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it will be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail; and if the person pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative; *Ibid.*, rule 27; for an example of the method of pleading referred to in this rule, see *post* No. 410.

(*c*) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim either with the writ of summons or notice in lieu of service of the writ of summons, or at any time afterwards, either before or after appearance, and although the defendant

time to deliver his statement of claim in this action ; and that the costs of this application may be costs in the action (*d*).

403.

Formal parts : see post No. 881.
on the part of the plaintiff, that, notwithstanding the time limited has expired, he may be at liberty on or before the —— day of ——, 187—, to deliver his statement of claim in this action ; and that the costs of this application may be costs in the action (*d*).

Summons for leave to deliver statement of claim, notwithstanding that the time has expired (*c*).

404.

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

The particulars of the plaintiff's claim herein, and of the relief

Notice in lieu of statement of claim where writ indorsed under Ord. III. rule 6 (*e*).

may have appeared and stated that he does not require the delivery of a statement of claim ; if the defendant has appeared and has not stated that he does not require the delivery of a statement of claim, then the plaintiff must, unless otherwise ordered by the Court or a Judge, deliver it within six weeks from the time of the defendant's entering his appearance ; but in no case where a defendant has appeared may a statement be delivered more than six weeks after the appearance has been entered, unless otherwise ordered by the Court or a Judge ; R. S. C. Ord. XXI. 1 (*a*) and (*b*). Where, after a statement of claim has been delivered, a party is added as defendant, the statement of claim must be amended, and a copy of the amended statement must be delivered to the new defendant at the time when he is served with the amended writ of summons or afterwards within four days after his appearance ; R. S. C. Ord. XVI. 16. In the computation of these times the time of the long vacation is not reckoned ; R. S. C. Ord. LVII. 5 ; nor may any pleading be delivered in the long vacation unless otherwise ordered by the Court or a Judge ; R. S. C. Ord. LVII. 4. The time allowed may be enlarged by the Court or a Judge, and such enlargement may be ordered notwithstanding the application for the same is not made until after the expiration of the time allowed ; R. S. C. Ord. LVII. 6.

(*c*) See note (*c*) to No. 402 *ante*.

(*d*) The R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22, provide, with respect to applications to extend the time for taking any proceeding limited by Rules of Court, that (subject to any special order as to the costs of and occasioned by any such application) the costs of one such application shall without any special order be allowed as costs in the action ; but that (unless specially ordered) no costs of any further application shall be allowed to the party making the same as against any other party, or any estate or fund in which any other party is interested.

(*e*) Where the writ is specially indorsed under Ord. III. rule 6, and the

and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons in this action.

Delivered the —— day of ——, 187—.

X. Y. of [*place of business*], agent for
T. Z. of [*place of business*], plaintiff's solicitor.
Or, A. B. of [*address*], plaintiff in person.

405.

Summons for further statement (*f*).

Formal parts: see post No. 881.

on the part of the defendant, that the plaintiff may be ordered to deliver a further and better statement of his claim, and of the relief or remedy to which he claims to be entitled in this action; and that the plaintiff may be ordered to pay to the defendant his costs of this application.

406.

Statement of claim in an action on an account stated (*g*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. . . . Plaintiff,
and
E. F. . . . Defendant.

Statement of Claim.

1. Between the 1st of January and the 28th of February, 1875, the plaintiff supplied to the defendant various articles of drapery; and accounts and invoices of the goods so supplied and their prices were from time to time furnished to the defendant, and payments on account were from time to time made by the defendant.

2. On the 28th of February, 1875, a balance remained due to the plaintiff of £75 9*s*., and an account was on that day sent by the plaintiff to the defendant showing that balance.

defendant has not dispensed with a statement of claim, it is sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a Judge shall order him to deliver a further statement. Such notice may be either written or printed, or partly written and partly printed, and must be marked on the face in the same manner as is required in the case of an ordinary statement of claim (as to which, see Ord. XIX. 7, and note (*a*) at p. 217). When the plaintiff is ordered to deliver such further statement it must be delivered within such time as by such order shall be directed, and if no time be so limited, then within the time mentioned in note (*c*) to No. 402; R. S. C. Ord. XXI. 4; and App. (B), form No. 3.

(*f*) See note (*e*) to No. 404 *ante*.

(*g*) See R. S. C. App. (C), form No. 1. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7; and *supra*, note (*a*) at p. 217.

3. On the 1st of March following, the plaintiff's collector saw the defendant at his house, and asked for payment of the said balance, and the defendant then paid him by cheque £25 on account of the same. The residue of the said balance, amounting to £50 9*s.*, has never been paid.

The plaintiff claims £——(*h*).

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*j*), *add*:] The plaintiff proposes that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by
X. Y. of [*place of business*], agent for
T. Z. of [*place of business*], solicitor for the plaintiff.
Or, A. B. of [*address*], plaintiff in person.

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407. Statement of claim in an action for administration (*k*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

In the matter of the estate of A. B. deceased.

Between E. F. . . . Plaintiff,
and
G. H. . . . Defendant.

Statement of Claim.

1. A. B. of K., in the county of L., died on the 1st of July, 1875, intestate. The defendant G. H. is the administrator of A. B.

2. A. B. died entitled to lands in the said county for an estate of fee simple, and also to some other real estate and to personal estate. The defendant has entered into possession of the real estate of A. B., and received the rents thereof. The legal estate in such real estate is outstanding in mortgagees under mortgages created by the intestate.

(*h*) As to the claim for relief, see R. S. C. Ord. XIX. 8; and *supra*, note (*b*) at p. 217.

(*j*) If the plaintiff desires to have the action tried elsewhere than in Middlesex, he must in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action will, unless a Judge otherwise orders, be tried in the county or place so named; if no place of trial is so named in the statement of claim, the place of trial will, unless a Judge otherwise orders, be the county of Middlesex; R. S. C. Ord. XXXVI. 1; this rule applies to actions brought in the Chancery Division; *Redmayne* v. *Vaughan*, 24 W. R. 983; *Clarke* v. *Cookson*, 2 Ch. D. 746, 748; *Warner* v. *Murdoch*, 4 Ch. D. 750.

(*k*) See R. S. C. App. (C), form No. 2. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

3. A. B. was never married; his father and mother pre-deceased him; he had one brother only, who pre-deceased him without having been married, and two sisters only, both of whom also pre-deceased him, namely M. N. and P. Q. The plaintiff is the only child of M. N., and the defendant is the only child of P. Q.

The plaintiff claims (*l*):—

1. To have the real and personal estate of A. B. administered in this court, and for that purpose to have all proper directions given and accounts taken.
2. To have a receiver appointed of the rents of his real estate.
3. Such further or other relief as the nature of the case may require.

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*m*), *add*:] The plaintiff proposes that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*.]

408.

Another form of statement of claim in an action for administration (*n*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

In the matter of the estate of A. B. deceased.

Between E. F. . . . Plaintiff,
and
G. H. . . . Defendant.

Statement of Claim.

1. A. B. of K., in the county of L., duly made his last will, dated the 1st day of March, 1873, whereby he appointed the defendant and M. N. (who died in the testator's lifetime) executors thereof, and devised and bequeathed his real and personal estate unto and to the use of his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his real estate for the person who would be the testator's heir-at-law, and as to his personal estate for the persons who would be the testator's next of kin, if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

(*l*) As to the claim for relief, see R. S. C. Ord. XIX. 8; and *supra*, note (*b*) at p. 217.

(*m*) See note (*j*) to No. 406 *ante*.

(*n*) See R. S. C. App. (C), form No. 3. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7; and *supra*, note (*a*) at p. 217.

2. The testator died on the 1st day of July, 1873, and his will was proved by the defendant on the 4th of October, 1873. The plaintiff has not been married.

3. The testator was at his death entitled to real and personal estate; the defendant entered into the receipt of the rents of the real estate and got in the personal estate; he has sold some part of the real estate.

The plaintiff claims (*o*):—

1. To have the real and personal estate of A. B. administered in this court, and for that purpose to have all proper directions given and accounts taken.
2. Such further or other relief as the nature of the case may require.

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*p*), *add:*] The plaintiff proposes that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

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409. Another form of statement of claim in an action for administration (*q*).

187—. H. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of W. H. deceased.
Writ issued ——, 187—.

Between A. B. and C. his wife . . Plaintiffs,
and
E. F. and G. H. . . Defendants.

Statement of Claim.

1. W. H. of H., in the county of L., duly made his last will, dated the 19th day of March, 1861, whereby he appointed the defendants the executors thereof, and bequeathed to them all his personal estate in trust to call in, sell, and convert the same into money, and thereout to pay his debts and funeral and testamentary expenses, and to divide the ultimate surplus into three shares, and to pay one of such three shares to each of his two children T. H., and E., the wife of E. W., and to stand possessed of the remaining third share upon trust for the children of the testator's son J. H. in equal shares, to be divided among them when the youngest of such children should attain the age of twenty-one years. And the testator devised his real estates to the defendants upon trust until

(*o*) As to the claim for relief, see R. S. C. Ord. XIX. 8; and *supra*, note (*b*) at p. 217.

(*p*) See note (*j*) to No. 406 *ante*.

(*q*) See R. S. C. App. (C), form No. 4. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

the youngest child of the said J. H. should attain the age of twenty-one years, to pay one third part of the rents thereof to the said T. H., and one other third part thereof to the said E. W., and to accumulate the remaining third part by way of compound interest, and so soon as the youngest child of the said J. H. should attain the age of twenty-one years, to sell the said real estates, and out of the proceeds of such sale to pay the sum of £1,000 to the said T. H., and to invest one moiety of the residue in manner therein mentioned, and stand possessed thereof in trust to pay the income thereof to the said E., the wife of the said E. W., during her life for her separate use, and after her death for her children, the interests of such children being contingent on their attaining the age of twenty-one years, and to divide the other moiety of such proceeds of sale and the accumulations of the third share of rents thereinbefore directed to be accumulated among such of the children of the said J. H. as should be then living, and the issue of such of them as should be then dead, in equal shares per stirpes.

2. The testator died on the 25th day of April, 1873, and his said will was proved by the defendants in the month of June, 1873.

3. The testator died possessed of one third share in a leasehold colliery called the Paradise Colliery, and in the engines, machinery, stock in trade, book debts, and effects belonging thereto. He was also entitled to real estate, and other personal estate.

4. The testator left T. H. and E., the wife of E. W., him surviving. J. H. had died in the testator's lifetime, leaving four children, and no more. The plaintiff C. B. is the youngest of the children of J. H., and attained the age of twenty-one years on the 1st of June, 1871. The other three children of J. H. died without issue in the lifetime of the testator.

5. E. W. has several children, but no child has attained the age of twenty-one years.

6. T. H. is the testator's heir-at-law.

7. The defendants have not called in, sold, and converted into money the whole of the testator's personal estate, but have allowed a considerable part thereof to remain outstanding; and in particular the defendants have not called in, sold, or converted into money the testator's interest in the said colliery, but have, from the death of the testator to the present time, continued to work the same in partnership with the other persons interested therein. The estate of the testator has sustained considerable loss by reason of such interest not having been called in, sold, or converted into money.

8. The defendants did not upon the death of the testator sell the testator's furniture, plate, linen, and china, but allowed the testator's widow to possess herself of a great part thereof, without accounting for the same, and the same has thereby been lost to the testator's estate.

9. The defendants have not invested the share of the testator's residuary personal estate given by his will to the children of the testator's son J. H., and have not accumulated one third of the

rents and profits of his real estate as directed by the said will, but have mixed the same share and rents with their own moneys, and employed them in business on their own account.

10. The defendants have sold part of the real estates of the testator, but a considerable part thereof remains unsold.

11. A receiver ought to be appointed of the outstanding personal estate of the testator, and the rents and profits of his real estate remaining unsold.

The plaintiffs claim (*r*) :—

1. That the estate of the said testator may be administered, and the trusts of his will carried into execution under the direction of the court.
2. That it may be declared that the defendants, by carrying on the business of the said colliery instead of realising the same, have committed a breach of trust, and that the parties interested in the testator's estate are entitled to the value of the testator's interest in the said partnership property as it stood at the testator's death, with interest thereon, or at their election to the profits which have been made by the defendants in respect thereof since the testator's death, whichever shall be found most for their benefit.
3. That an account may be taken of the interest of the testator in the said colliery, and in the machinery, book debts, stock, and effects belonging thereto, according to the value thereof at the testator's death, and an account of all sums of money received by or by the order or for the use of the defendants, or either of them, on account of the testator's interest in the said colliery, and that the defendants may be ordered to make good to the estate of the testator the loss arising from their not having realised the interest of the testator in the said colliery within a reasonable time after his decease.
4. That an account may be taken of all other personal estate of the testator come to the hands of the defendants, or either of them, or to the hands of any other person by their or either of their order, or for their or either of their use, or which, but for their wilful neglect or default, might have been so received ; and an account of the rents and profits of the testator's real estate, and the moneys arising from the sale thereof, possessed or received by or by the order or for the use of the defendants, or either of them.
5. That the real estate of the testator remaining unsold may be sold under the direction of the court.
6. That the defendants may be decreed, at the election of the parties interested in the testator's estate, either to pay interest at the rate of £5 per cent. per annum upon such

(*r*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

moneys belonging to the estate of the testator as they have improperly mixed with their own moneys and employed in business on their own account, and that half-yearly rests may be made in taking such account as respects all moneys which by the said will were directed to be accumulated, or to account for all profits by the employment in their business of the said trust money.

7. That a receiver may be appointed of the outstanding personal estate of the testator, and to receive the rents and profits of his real estate remaining unsold.

8. Such further or other relief as the nature of the case may require.

[*If the plaintiffs propose to have the action tried elsewhere than in Middlesex* (*s*), *add:*] The plaintiffs propose that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante.*]

410.

Statement of claim in action by principal against agent (*t*).

187—. B. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Writ issued ——, 187—.

Between A. B. and Company . . Plaintiffs,
and
E. F. and Company . . Defendants.

Statement of Claim.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at ——, in the county of ——.

2. The defendants are commission agents, carrying on business in London.

3. In the early part of the year ——, the plaintiffs commenced, and down to the ——, 187—, continued, to consign to the defendants as their agents large quantities of their manures for sale, and the defendants sold the same, and received the price thereof and accounted to the plaintiffs therefor.

4. No express agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at —— per cent. on all sales

(*s*) See note (*j*) to No. 406 *ante*.

(*t*) See R. S. C. App. (C), form No. 5. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217. As to the mode adopted in paragraphs 3, 4, 5 of alleging the creation of the relation of principal and agent between the parties, see R. S. C. Ord. XIX. 27, and *supra*, note (*b*) at p. 217.

effected by them, which is the rate of commission ordinarily charged by del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchasers or not.

5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances hereinafter mentioned liable as ordinary agents.

6. On the ——, the plaintiffs consigned to the defendants for sale a large quantity of goods, including —— tons of ——.

7. On or about the ——, the defendants sold —— tons of ——, part of such goods, to one G. H. for £——, at three months credit, and delivered the same to him.

8. G. H. was not at that time in good credit and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. G. H. did not pay for the said goods, but before the expiration of the said three months for which credit had been given was adjudicated a bankrupt, and the plaintiffs have never received the said sum of £—— or any part thereof.

The plaintiffs claim (*u*) :—

1. Damages to the amount of £——.
2. Such further or other relief as the nature of the case may require.

[*If the plaintiffs propose to have the action tried elsewhere than in Middlesex* (*v*), *add* :] The plaintiffs propose that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

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411. Statement of claim in an action on a bill of exchange (*w*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. and C. D. . . Plaintiffs,
and
E. F. and G. H. . . Defendants.

Statement of Claim.

1. Messrs. M. N. & Co., on the —— day of ——, drew a bill of

(*u*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*v*) See note (*j*) to No. 406 *ante*.

(*w*) See R. S. C. App. (C), form No. 6. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217. There being no claim in respect of the consideration for the bill, it need not be alleged that the defendants received consideration for the bill or that the plaintiffs gave any ; R. S. C. Ord. XIX. 28 ; and *supra*, note (*b*) at p. 217.

exchange upon the defendants for £——, payable to the order of the said Messrs. M. N. & Co., three months after date, and the defendants accepted the same.

2. Messrs. M. N. & Co., endorsed the bill to the plaintiffs.

3. The bill became due on the ——, and the defendants have not paid it.

The plaintiffs claim (*x*):

The amount of the bill and interest thereon to judgment.

[*If the plaintiffs propose to have the action tried elsewhere than in Middlesex* (*y*), *add:*] The plaintiffs propose that the action should be tried in ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

412.

Statement of claim in an action on a bill of exchange, and on the consideration therefor (*a*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. and C. D. . . . Plaintiffs,
and
E. F. and G. H. . . . Defendants.

Statement of Claim.

1. The plaintiffs are —— merchants, factors, and commission agents, carrying on business in London.

2. The defendants are merchants and commission agents, carrying on business at Hong Kong.

3. For several years prior to the ——, 1875, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

4. On the —— of ——, the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of £—— was accordingly due to the plaintiffs from the defendants.

5. On or about the ——, 1875, the plaintiffs sent to the defendants a statement of the accounts between them, showing the said sum as the balance due to the plaintiffs from the defendants; and

(*x*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*y*) See note (*j*) to No. 406 *ante*.

(*a*) See R. S. C. App. (C), form No. 7. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

the defendants agreed to the said statement of accounts as correct, and to the said sum of £—— as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

6. The defendants requested the plaintiffs to give them three months' time for payment of the said sum of £——, and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.

7. The plaintiffs thereupon, on the ——, drew two bills of exchange upon the defendants, one for £——, and the other for £——, both payable to the order of the plaintiffs three months after date, and the defendants accepted the bills.

8. The said bills became due on the ——, 187—, and the defendants have not paid the bills, or either of them, nor the said sum of £——.

The plaintiffs claim (*b*) :

£—— and interest to the date of judgment.

[*If the plaintiffs propose to have the action tried elsewhere than in Middlesex* (*c*), *add :*] The plaintiffs propose that the action should be tried in ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

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413. Statement of claim in an action on a bill of lading (*d*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. and C. D. . . . Plaintiffs,
and
E. F. and G. H. . . . Defendants.

Statement of Claim.

1. In the month of February, 1873, Messrs. L. & Co., of Alexandria, caused to be shipped 6,110 ardebs of cotton-seed on board the "Ida," then lying in Port Said (Egypt), and the then master of the vessel received the same, to be carried from Port Said to Hull, upon the terms of three bills of lading, signed by the master, and delivered to Messrs. L. & Co.

2. The three bills of lading, being in form exactly similar to one another, were and are, so far as is material to the present case, in the words, letters, and figures following, that is to say (*e*) :

(*b*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*c*) See note (*j*) to No. 406 *ante*.

(*d*) See R. S. C. App. (C), form 8. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

(*e*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and *supra*, note (*b*) at p. 217.

"Shipped in good order and well conditioned by L. & Co. Alexandria (Egypt) in and upon the good ship called the 'Ida,' whereof is master for the present voyage Ambrozio Chiapella, and now riding at anchor in the port of Port Said (Egypt), and bound for Hull, six thousand one hundred and ten ardebs cotton-seed being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at the aforesaid Port of Hull (the act of God, the Queen's enemies, fire and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, save risk of boats so far as ships are liable thereto, excepted), unto order or to assigns paying freight for the said goods at the rate of (19*s.*) say nineteen shillings sterling in full per ton of 20 cwt. delivered with £10 gratuity. Other conditions as per charter-party, dated London, 4th October, 1872, with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading all of this tenor and date, the one of which three bills being accomplished the other two to stand void. Dated in Port Said (Egypt) 6th February 1873. 100 dunnage mats. Fifteen working days remain for discharging."

3. The persons constituting the firm of Messrs. L. & Co., are identical with the members of the plaintiffs' firm.

4. The vessel sailed on her voyage to Hull, and duly arrived there on or about the 7th day of May, 1873.

5. The cotton-seed was delivered to the plaintiffs, but not in as good order and condition as it was in when shipped at Port Said; but was delivered to the plaintiffs greatly damaged.

6. The deterioration of the cotton-seed was not occasioned by any of the perils or causes in the bills of lading excepted.

7. By reason of the premises, the plaintiffs lost a great part of the value of the said cotton-seed, and were put to great expense in and about keeping, warehousing, and improving the condition of the said cotton-seed, and in and about having the same surveyed.

The plaintiffs claim the following relief (*f*):

1. £—— for damages.

2. Such further relief as the nature of the case requires.

[*If the plaintiffs propose to have the action tried elsewhere than in Middlesex* (*g*), *add:*] The plaintiffs propose that the action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

(*f*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*g*) See note (*j*) to No. 406 *ante*.

414. Statement of claim in an action on a charter-party (*h*).

187—. B. No. .

In the High Court of Justice,
Chancery Division,
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. and C. D. . . . Plaintiffs,
and
E. F. and G. H. . . . Defendants.

Statement of Claim.

1. The plaintiffs were, on the 1st August, 1874, the owners of the steamship "British Queen."

2. On the 1st August, 1874, the ship being then in Calcutta, a charter-party was there entered into between John Smith, the master, on behalf of himself and the owners of the said ship of the one part, and the defendants of the other part.

3. By the said charter-party it was agreed (*j*), amongst other things, that the defendants should be entitled to the whole carrying-power of the said steamship for the period of four months certain, commencing from the said 1st August, 1874, upon a voyage or voyages between Calcutta and Mauritius and back; that the defendants should pay for such use of the said steamship to the plaintiffs' agents at Calcutta, monthly, the sum of £1,000; that the charter should terminate at Calcutta; and that if at the expiration of the said period of four months the said steamship should be upon a voyage, then the defendants should pay *pro ratâ* for the hire of the ship up to her arrival at Calcutta, and the complete discharge of her cargo there.

4. The "British Queen" made several voyages in pursuance of the said charter-party, and the first three monthly sums of £1,000 each were duly paid.

5. The period of four months expired on the 1st December, 1874, and at that time the steamship was on a voyage from Mauritius to Calcutta. She arrived at Calcutta on the 13th December, and the discharge of her cargo there was completed on the 16th December, 1874.

6. The plaintiffs' agents at Calcutta called upon the defendants to pay to them the fourth monthly sum of £1,000, and a sum of £500 for the hire of the steamship from the 1st to the 16th December, 1874, but the defendants have not paid any part of the said sums.

The plaintiffs claim (*k*):

(*h*) See R. S. C. App. (C), form 10. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

(*j*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and note (*b*) *supra*, at p. 217.

(*k*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

The sum of £1,500, and interest upon £1,000 part thereof from the 1st December, 1874, until judgment.

[*If the plaintiffs propose to have the action tried elsewhere than in Middlesex* (*l*), *add:*] The plaintiffs propose that this action should be tried in ——.

Delivered —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

415.

Statement of claim in an action for false imprisonment (*m*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. . . . . Plaintiff,
and
E. F. . . . . Defendant.

Statement of Claim.

1. The plaintiff is a journeyman painter. The defendant is a builder having his building-yard and carrying on business at ——, and for six months before and up to the 22nd August, 187—, the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August, 187—, the plaintiff came to work as usual in the defendant's yard, at about six o'clock in the morning.

3. A few minutes after the plaintiff had so come to work the defendant's foreman X. Y., who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X. Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

4. The defendant was present at the time when the plaintiff was given into custody, and authorised and assented to his being so given into custody; and in any case X. Y., in giving the plaintiff into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

5. The plaintiff upon being so given into custody, was taken by the said constable a considerable distance through various streets, on foot, to the —— police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the —— police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff

(*l*) See note (*j*) to No. 406 *ante*.

(*m*) See R. S. C. App. (C), form 13. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.

The plaintiff claims £—— damages (*n*).

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*o*), *add:*] The plaintiff proposes that this action should be tried in ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

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416. Statement of claim in a foreclosure action (*p*).

187—. W. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between R. W. . . . . Plaintiff,
and
O. S. and J. B. . . . Defendants.

Statement of Claim.

1. By an indenture (*q*), dated the 25th of March, 1867, made between the defendant O. S. of the one part, and the plaintiff of the other part, the defendant O. S., in consideration of the sum of £10,000 paid to him by the plaintiff, conveyed to the plaintiff and his heirs a farm containing 398 acres, situate in the parish of B., in the county of D., with all the coal mines, seams of coal, and other mines and minerals in and under the same, subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the plaintiff, his executors, administrators, or assigns, of the sum of £10,000, with interest for the same in the meantime at the rate of £4 per cent. per annum, on the 25th day of September then next.

2. By an indenture (*q*), dated the 1st day of April, 1867, made between the defendant O. S. of the one part, and the defendant J. B. of the other part, the defendant O. S. conveyed to the defendant J. B. and his heirs the hereditaments comprised in the hereinbefore stated security of the plaintiff, or some parts thereof, subject to the plaintiff's said security, and subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the defendant J. B., his executors, administrators, or assigns, of the sum of

(*n*) As to the claim for relief, see R. S. C. Ord. XIX., and *supra*, note (*b*) at p. 217.

(*o*) See note (*j*) to No. 406 *ante*.

(*p*) See R. S. C. App. (C), form No. 14. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and *supra*, note (*a*) at p. 217.

(*q*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and *supra*, note (*b*) at p. 217.

£15,000, with interest for the same in the meantime at the rate of £5 per cent. per annum.

3. The whole of the said sum of £10,000, with an arrear of interest thereon, remains due to the plaintiff on his said security.

The plaintiff claims as follows (*r*):

1. That an account may be taken of what is due to the plaintiff for principal money and interest on his said security, and that the defendants may be decreed to pay to the plaintiff what shall be found due to him on taking such account, together with his costs of this action, by a day to be appointed by the Court, the plaintiff being ready and willing, and hereby offering, upon being paid his principal money, interest, and costs, at such appointed time, to convey the said mortgaged premises as the Court shall direct.
2. That in default of such payment the defendants may be foreclosed of the equity of redemption in the mortgaged premises.
3. Such further or other relief as the nature of the case may require.

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*s*), *add:*] The plaintiff proposes that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

417.

Statement of claim in an action for fraudulent misrepresentation (*t*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. . . . . Plaintiff,
and
E. F. . . . . Defendant.

Statement of Claim.

1. In or about March, 1875, the defendant caused to be inserted in the "Daily Telegraph" newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade, of a baker's shop and business, and described the same as an increasing business, and doing twelve sacks a week. The advertisement directed application for particulars to be made to X. Y.

2. The plaintiff having seen the advertisement applied to X. Y., who placed him in communication with the defendant, and nego-

(*r*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*s*) See note (*j*) to No. 406 *ante*.

(*t*) See R. S. C. App. (C), form No. 15. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

tiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at ——, with the lease, fixtures, fittings, stock-in-trade, and good-will.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than twelve sacks a week.

4. On the 5th of April, 1875, the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant for £500, and paid to him a deposit of £200 in respect of the purchase.

5. On the 15th April the purchase was completed, an assignment of the lease executed, and the balance of the purchase-money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations for the said purchase by him and of the said agreement and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than eight sacks a week. And the said premises were not of the value of £500, or of any saleable value whatever.

7. The defendant made the false representations hereinbefore mentioned, well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims £—— damages (*u*).

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*v*), *add:*] The plaintiff proposes that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

418. Statement of claim in an action on an agreement of guarantee (*w*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. and C. D. . . . Plaintiffs,
and
E. F. . . . . Defendant.

Statement of Claim.

1. The plaintiffs are brewers carrying on their business at ——, under the firm of X. Y. & Co.

2. In the month of March, 1872, M. N. was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendant and

(*u*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*v*) See note (*j*) to No. 406 *ante*.

(*w*) See R. S. C. App. (C), form No. 16. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

the said M. N., that the plaintiffs should employ M. N., upon the defendant entering into the guarantee hereinafter mentioned.

3. An agreement in writing (*x*) was accordingly made and entered into on or about the 30th March, 1872, between the plaintiffs and the defendant, whereby in consideration that the plaintiffs would employ M. N. as their collector, the defendant agreed that he would be answerable for the due accounting by M. N. to the plaintiffs for and the due payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed M. N. as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st of December, 1873.

5. At various times between the 29th of September and the 25th of December, 1873, M. N. received on behalf of the plaintiffs and as their collector sums of money from debtors of the plaintiffs, amounting in the whole to the sum of £950; and of this amount M. N. neglected to account for or pay over to the plaintiffs sums amounting in the whole to £227, and appropriated the last-mentioned sums to his own use.

6. The defendant has not paid the last-mentioned sums, or any part thereof to the plaintiffs.

The plaintiffs claim (*y*):

Damages to the amount of £227.

[*If the plaintiffs propose to have the action tried elsewhere than in Middlesex* (*z*), *add:*] The plaintiffs propose that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

419. Statement of claim in an action by a landlord against his tenant for recovery of the possession of the demised premises, arrears of rent, mesne profits, and damages for the breach of a covenant to repair (*a*).

187—. B. No. .

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. . . . . Plaintiff,

and

C. D. . . . . Defendant.

Statement of Claim.

1. On the —— day of ——, the plaintiff by deed (*b*) let to the

(*x*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and *supra*, note (*b*) at p. 217.

(*y*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*z*) See note (*j*) to No. 406 *ante*.

(*a*) See R. S. C. App. (C), form 18. The causes of action stated in this statement of claim may be joined without an order; R. S. C. Ord. XVII. 2, and note (*z*) at p. 118 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217.

(*b*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and *supra*, note (*b*) at p. 217.

defendant a house and premises, No. 52, —— Street, in the city of London, for a term of twenty-one years from the —— day of ——, at the yearly rent of £120, payable quarterly.

2. By the said deed the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained (*b*) a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved whether demanded or not should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the 24th June, 187—, a quarter's rent became due, and on the 29th of September, 187—, another quarter's rent became due; on the 21st October, 187—, both had been in arrear for twenty-one days, and both are still due.

5. On the same 21st October, 187—, the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims (*c*):

1. Possession of the said house and premises.
2. £—— for arrears of rent.
3. £—— damages for the defendant's breach of his covenant to repair.
4. £—— for the occupation of the house and premises from the 29th of September, 187—, to the day of recovering possession.

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*d*), *add:*] The plaintiff proposes that this action should be tried in ——.

Delivered on the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

420. Statement of claim in an action for negligence of defendant's servants (*e*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. . . . . Plaintiff,

and

E. F. . . . . Defendant.

Statement of Claim.

1. The plaintiff is a shoemaker, carrying on business at ——. The defendant is a soap and candle manufacturer of ——.

(*b*) See note (*b*) *supra*.

(*c*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, p. 217, note (*b*).

(*d*) See note (*j*) to No. 406 *ante*.

(*e*) See R. S. C. App. (C), form No. 20. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and note (*a*) at p. 217 *supra*.

2. On the ——, 187—, the plaintiff was walking eastward, along the south side of Fleet Street, in the city of London, at about three o'clock in the afternoon. He was obliged to cross —— Street, which is a street running into Fleet Street, at right angles on the south side. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Fleet Street into —— Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof, the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims £—— damages (*f*).

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*g*), *add:*] The plaintiff proposes that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

421.

Statement of claim in an action on a promissory note (*h*).

In the High Court of Justice, 187—. B. No. .
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. . . . . Plaintiff,
and
E. F. . . . . Defendant.

Statement of Claim.

1. The defendant on the —— day of —— made his promissory note, whereby he promised to pay to the plaintiff or his order £—— three months after date.

2. The note became due on the —— day of ——, 1874, and the defendant has not paid it.

The plaintiff claims (*j*):

(*f*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*g*) See note (*j*) to No. 406 *ante*.

(*h*) See R. S. C. App. (C), form 22. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217. There being no claim in respect of the consideration for the note, it need not be alleged that the defendant received any consideration; R. S. C. Ord. XIX. 28, and *supra*, note (*b*) at p. 217.

(*j*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

The amount of the note and interest thereon to judgment.

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*k*), *add:*] The plaintiff proposes that this action should be tried in the county of ——.

Delivered on the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

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422. Statement of claim in an action for the recovery of the possession of a house, and for mesne profits (*l*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. . . . . Plaintiff,
and
C. D. . . . . Defendant.

Statement of Claim.

1. On the —— day of ——, the plaintiff let to the defendant a house No. 52, —— Street, in the city of London, as tenant from year to year at the yearly rent of £120, payable quarterly, the tenancy to commence on the —— day of ——.

2. The defendant took possession of the house, and continued tenant thereof until the —— day of —— last, when the tenancy determined by a notice duly given.

3. The defendant has disregarded the notice and still retains possession of the house.

The plaintiff claims (*m*):

1. Possession of the house.

2. £—— for mesne profits from the —— day of ——.

[*If the plaintiff proposes to have the action tried elsewhere than in Middlesex* (*n*), *add:*] The plaintiff proposes that this action should be tried in ——.

Delivered on the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

(*k*) See note (*j*) to No. 406 *ante*.

(*l*) See R. S. C. App. (C), form 24. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217. The causes of action stated in this statement of claim may be joined without an order; R. S. C. Ord. XVII. 2, and note (*z*) at p. 118 *ante*.

(*m*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*n*) See note (*j*) to No. 406 *ante*.

423. Statement of claim in an action for the recovery of the possession of land, and for mesne profits (*o*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. and C. D. . . . Plaintiffs,
and
E. F. . . . . Defendant.

Statement of Claim.

1. K. L., late of Sevenoaks, in the county of Kent, duly executed his last will, dated the 4th day of April, 1870, and thereby (*p*) devised his lands at or near Sevenoaks and all other his lands in the county of Kent, unto and to the use of the plaintiffs and their heirs upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof.

2. K. L. died on the 3rd day of January, 1875, and his said will was duly proved by the plaintiffs on or about the 4th day of February, 1875.

3. K. L. was at the time of his death seised in fee of a house at Sevenoaks, and two farms near there called respectively —— the home farm containing 276 acres, and the Longton farm containing 700 acres, both in the county of Kent.

4. The defendant soon after the death of K. L. entered into possession of the house and two farms, and has refused to give them up to the plaintiffs.

The plaintiffs claim (*q*):

1. Possession of the house and two farms:
2. £—— for mesne profits of the premises from the death of K. L. till such possession shall be given.

[*If the plaintiffs propose that the action should be tried elsewhere than in Middlesex* (*r*), *add:*] The plaintiffs propose that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

(*o*) See R. S. C. App. (C), form 25. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and *supra*, note (*a*) at p. 217. The causes of action stated in this statement of claim may be joined without leave; R. S. C. Ord. XVII. 2, and note (*z*) at p. 118 *ante*.

(*p*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and note (*b*) at p. 217 *supra*.

(*q*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *supra*, note (*b*) at p. 217.

(*r*) See note (*j*) to No. 406 *ante*.

424. Statement of claim in an action for trespass to land (*s*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Writ issued ——, 187—.

Between A. B. . . . . Plaintiff,
and
E. F. . . . . Defendant.

Statement of Claim.

1. The plaintiff was on the 5th March, 1876, and still is, the owner and occupier of a farm called Highfield Farm, in the parish of ——, and county of ——.

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff, and is separated therefrom by a hedge and ditch.

3. For a long time prior to the 5th March, 1876, the defendant had wrongfully claimed to use the said road for his horses and carriages, on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th March, 1876, the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's hedge and ditch upon each side of the road, and went upon the plaintiff's field beyond the hedge and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of, the said road as a highway.

The plaintiff claims (*t*):

1. Damages for the wrongs complained of.
2. An injunction restraining the defendant from any repetition of any of the acts complained of (*u*).
3. Such further relief as the nature of the case may require.

(*s*) See R. S. C. App. (C), form No. 27. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and note (*a*) at p. 217 *supra*.

(*t*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and note (*b*) at p. 217 *supra*.

(*u*) An injunction may be granted although the defendant claims a right to do the act sought to be restrained under colour of title; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subsec. 8.

[*If the plaintiff proposes that the action should be tried elsewhere than in Middlesex* (*v*), *add:*] The plaintiff proposes that this action should be tried in the county of ——.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406 *ante*].

Section II.—The Statement of Defence (*a*).

(*v*) See note (*j*) to No. 406 *ante*.

(*a*) Where a statement of claim has been delivered to the defendant he must, and where no statement of claim has been delivered to him he may, deliver to the plaintiff a statement of his defence; R. S. C. Ord. XIX. 2; Ord. XXII. 1, 2; *Hooper* v. *Giles*, W. N. (1876), 10. In such statement of defence, the defendant must allege all such facts not appearing in the statement of claim (if any) as he means to rely on, and must raise all such grounds of defence as, if not raised on the pleadings, would be likely to take the plaintiff by surprise, or would raise new issues of fact not arising out of the pleadings, as, for instance, fraud, or that any claim has been barred by the Statute of Limitations or has been released; R. S. C. Ord. XIX. 18; thus, where the statement of defence, after denying the making of an agreement as alleged in the statement of claim, proceeded to allege that the person by whom the agreement was alleged to have been made was, at the time of the making thereof, of unsound mind, it was held that the only issue raised by this defence was that of the unsoundness of mind of the alleged contractor, and that the defendant could not at the trial raise the question of the authority of the agent by whom the alleged agreement was made; *Byrd* v. *Nunn*, 5 Ch. D. 781; affirmed on appeal, 7 Ch. D. 284; so, where the defendant alleged that a song had not been duly registered by reason of the time of the first publication thereof not being truly entered on the register, he was not allowed to prove that the registration was void by reason of the name of the publisher not being truly stated; *Collette* v. *Goode*, 7 Ch. D. 842. Where the defendant relies upon several distinct grounds of defence, founded upon separate and distinct facts, such facts must, as far as may be, be stated separately and distinctly; R. S. C. Ord. XIX. 9. But the defendant need not allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the plaintiff, unless the same has first been specifically denied; *Ibid.*, rule 28; nor need any defendant in an action for the recovery of land who is in possession by himself or his tenant plead his title, unless his defence depends on an equitable estate or right, or unless he claims relief upon any equitable ground against any right or title asserted by the plaintiff; but, except in those cases, it will be sufficient to state by way of defence that he is so in possession; and he may nevertheless rely upon any ground of defence which he can prove, except as above mentioned; *Ibid.*, rule 15; and a defendant may still plead not guilty by statute, and such defence will have the same effect as a plea of not guilty by statute has hitherto had; but a defendant so pleading may not plead any other defence without the leave of the Court or a Judge; *Ibid.*, rule 16. A defendant may not in his statement of defence deny generally the facts alleged by the statement of claim, but he must deal

specifically with each allegation of fact of which he does not admit the truth ; *Ibid.*, rule 20 ; thus, where the defendant put in a statement of defence simply stating that he "put the plaintiff to proof of the several allegations in the statement of claim," it was held that the allegations of fact contained in the plaintiff's statement of claim were admitted ; *Harris* v. *Gamble*, 7 Ch. D. 877. And if a defendant denies any allegation of fact in the statement of claim, he must not do so evasively, but must answer the point of substance ; thus, if it be alleged that he received a certain sum of money, it will not be sufficient for him to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received ; and so, when a matter of fact is alleged with divers circumstances, it will not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given ; *Ibid.*, rule 22 ; thus, where the defendant in his statement of defence stated that he "denied that the terms of the arrangement were definitely agreed upon as alleged" in the statement of claim, it was held that this denial was evasive ; *Thorp* v. *Holdsworth*, 3 Ch. D. 637 ; so, where the statement of claim alleged that the defendant had offered to a trustee a bribe of a certain sum, a denial of the offer in the words of the statement of claim was held to be evasive and not to answer the point of substance ; *Tildesley* v. *Harper*, 7 Ch. D. 403 ; so, where the statement of defence denied, in words following the words of the statement of claim, that an agreement had been made, it was held that this was evasive, and that the defendant could not prove a want of authority in the agent by whom the alleged agreement was made ; *Byrd* v. *Nunn*, 5 Ch. D. 781 ; 7 Ch. D. 284 ; and see *Collette* v. *Goode*, stated *supra*. Every allegation of fact in the statement of claim, unless denied specifically or by necessary implication, or stated to be not admitted, will be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition ; R. S. C. Ord. XIX. 17 ; see *Jenkins* v. *Davies*, 1 Ch. D. 696 ; *Thorp* v. *Holdsworth*, *ubi supra* ; *Harris* v. *Gamble*, *ubi supra* ; *Byrd* v. *Nunn*, *ubi supra* ; *Tildesley v. Harper*, *ubi supra* ; and *Collette* v. *Goode*, *ubi supra*. If the defendant wishes to deny the right of the plaintiff to claim as executor, or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he must deny the same specifically ; R. S. C. Ord. XIX. 11. When a contract is alleged in the statement of claim, a bare denial thereof by the defendant will be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise ; *Ibid.*, rule 23 ; the defence, therefore, of the Statute of Frauds must be expressly pleaded ; *Catling* v. *King*, 5 Ch. D. 660. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the statement of defence ought to have been admitted, the Court may make such order as may be just with respect to any extra costs occasioned by such facts having been denied or not admitted ; R. S. C. Ord. XXII. 4. No plea or defence may be pleaded in abatement ; R. S. C. Ord. XIX. 13. As to the mode of alleging the contents of a document, or the condition of the mind of any person, or notice, or a contract, or the creation of any relation between any persons, where such contract or relation does not arise from express agreement, but is to be implied from a number of circumstances, see R. S. C. Ord. XIX. rules 24, 25, 26, 27, and *ante* p. 218.

425.
Summons for further time to deliver statement of defence (*b*).

Formal parts : see post No. 881.
on the part of the defendant, that he may have —— days further time to deliver his statement of defence in this action ; and that the costs of this application may be costs in the action (*c*).

426.
Summons for leave to deliver statement of defence, notwithstanding that the time has expired (*b*).

Formal parts : see post No. 881.
on the part of the defendant, that notwithstanding the time limited has expired, he may be at liberty on or before the —— day of ——, 187—, to deliver his statement of defence in this action ; and that the costs of this application may be costs in the action (*c*).

427.
Summons for leave to plead other defences in addition to the defence of not guilty by statute (*d*).

Formal parts : see post No. 881.
on the part of the defendant, that in addition to the defence of not guilty by the statute [*here specify the year, chapter, and section of the statute relied on, and state whether it is a public Act or not*], the defendant may be at liberty to plead by way of defence to the plaintiff's claim in this action, that [*here specify shortly the nature of the defence which it is desired to plead with not guilty by statute*] ; and that the costs of this application may be costs in the action.

(*b*) Where a statement of claim has been delivered the defendant must deliver his defence within eight days from the delivery of the statement of claim, or from the expiration of the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge ; R. S. C. Ord. XXII. 1 ; where no statement of claim has been delivered, the defendant may deliver a defence at any time within eight days after his appearance, unless such time is extended by the Court or a Judge ; *Ibid.*, rule 2 ; where leave has been given to a defendant to defend under Ord. XIV. rule 1, he must deliver his defence, within such time as shall be limited by the order giving him leave to defend, or, if no time is thereby limited, then within eight days after the order ; *Ibid.*, rule 3 ; *Atkins* v. *Taylor*, W. N. (1876), 11 ; *Margate Pier Co.* v. *Perry*, W. N. (1876), 52. In the computation of these times the time of the long vacation is not reckoned ; R. S. C. Ord. LVII. 5 ; nor may a statement of defence be delivered in the long vacation, unless otherwise ordered by the Court or a Judge ; *Ibid.*, rule 4. The time allowed may be enlarged by the Court or a Judge, and such enlargement may be ordered notwithstanding the application for the same is not made until after the expiration of the time allowed ; *Ibid.*, rule 6.

(*c*) See note (*d*) to No. 402 *ante*.

(*d*) If a defendant pleads not guilty by statute, he may not plead any other defence without the leave of the Court or a Judge ; R. S. C. Ord. XIX. 16.

428.
Statement of defence in an administration action (*e*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of A. B., deceased.
Between E. F. . . . . Plaintiff,
and
G. H. . . . . Defendant.

Statement of Defence.

1. The plaintiff is an illegitimate child of M. N. M. N. was never married.

2. The intestate was not entitled to any real estate at his death, except a copyhold estate, situate in the county of R., and held of the manor of S. According to the custom of that manor, when the copyholder dies without issue and without leaving a brother or issue of a deceased brother, the copyhold descends to his elder sister and her issue in preference to his younger sister and her issue. P. Q. was older than M. N.

3. The personal estate of A. B. was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses, and part of his debts.

Delivered the —— day of ——, 187—, by
X. Y. of [*place of business*], agent for
T. Z. of [*place of business*], solicitor for the defendant.
Or, G. H. of [*address*], defendant in person.

429.
Statement of defence in an administration action (*f*).

Formal commencement: see ante No. 408.

Statement of Defence.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some real estate which the defendant sold, and which produced the net sum of £4,300, and the testator had some personal estate which the defendant got in, and which produced the net sum of £1,204. The defendant applied the whole of the said sums, and the sum of £84 which the defendant received from rents of the real estate, in the payment of the funeral and testamentary expenses and some of the debts of the testator. The defendant made up his accounts and sent a copy

(*e*) See R. S. C. App. (C), form No. 2. For a statement of the claim to which this is a defence, see No. 407 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4, 7, and note (*a*) at p. 217.

(*f*) See R. S. C. App. (C), form No. 3. For a statement of the claim to which this is a defence, see No. 408 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. rules 4 and 7, and note (*a*) at p. 217.

thereof to the plaintiff on the 10th of January, 1875, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer. The defendant submits that the plaintiff ought to pay the costs of this action.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante*].

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430. Statement of defence in an administration action (*g*).

Formal commencement: see ante No. 409.

Statement of Defence of the above-named Defendants.

1. Shortly after the decease of the testator the defendants, as his executors, possessed themselves of and converted into money the testator's personal estate, except his share in the colliery mentioned in the plaintiff's statement of claim. The moneys so arising were applied in payment of part of the testator's debts and funeral and testamentary expenses, but such moneys were not sufficient for the payment thereof in full.

2. The Paradise colliery was, at the testator's decease, worked by him in partnership with J. Y. and W. Y. and T. Y. both since deceased. No written articles of partnership had been entered into, and for many years the testator had not taken any part in the management of the said colliery, but it was managed exclusively by the other partners, and the defendants did not know with certainty to what share therein the testator was entitled.

3. Upon the death of the testator, the defendants endeavoured to ascertain the value of the testator's share in the colliery, but the other partners refused to give them any information. The defendants thereupon had the books of the colliery examined by a competent accountant, but they had been so carelessly kept that it was impossible to obtain from them any accurate information respecting the state of the concern; it was, however, ascertained that a considerable sum was due to the testator's estate.

4. Between the death of the testator and the beginning of the year 1874, the defendants made frequent applications to J. Y., W. Y. and T. Y. for a settlement of the accounts of the colliery. Such applications having proved fruitless, the defendants, in January, 1874, filed their bill of complaint in the Court of Chancery against J. Y., W. Y. and T. Y. praying for an account of the partnership dealings between the testator and the defendants thereto, and that the partnership might be wound up under the direction of the Court.

5. The said T. Y. died in the year 1874, and the suit was revived against J. P. and T. S., his executors. The suit is still pending.

(*g*) See R. S. C. App. (C), form No. 4. For a statement of the claim to which this is a defence, see No. 409 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

6. As to the Paradise Colliery, the defendants have acted to the best of their judgment for the benefit of the testator's estate, and they deny being under any liability in respect of the said colliery not having been realised. They submit to act under the direction of the Court as to the further prosecution of the said suit, and generally as to the realisation of the testator's interest in the said colliery.

7. With respect to the statements in the eighth paragraph of the statement of claim, the defendants say, that upon the death of the testator, they sold the whole of his furniture, linen, and china, and also all his plate, except a few silver teaspoons of very small value, which were taken possession of by his widow, and they applied the proceeds of such sale as part of the testator's personal estate, and they deny being under any liability in respect of such furniture, linen, china, and plate.

8. With respect to the statements in paragraph seven of the statement of claim, the defendants say that all moneys received by them, or either of them, on account of the testator's estate, were paid by them to their executorship account, at the bank of Messrs. H. & Co., and until the sale of the testator's real estate took place as hereinafter mentioned, the balance to their credit was never greater than was necessary for the administration of the trusts of the testator's will, and they therefore were unable to make any such investment or accumulation as directed by the testator's will. No moneys belonging to the testator's estate have ever been mixed with the moneys of the defendants, or of either of them, nor has any money of the testator been employed in business since the testator's decease, except that his share in the said colliery, for the reason hereinbefore appearing, has not been got in.

9. In 1874, after the plaintiff C. B. had attained her age of twenty-one years, the defendants sold the real estate of the testator for sums amounting to £15,080, and no part thereof remains unsold. They received the purchase-moneys in December, 1874, and on the —— day of ——, 1875, they paid such proceeds into Court to the credit of this action with the exception of £500 retained on account of costs incurred and to be incurred by them.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante*].

431.

Statement of defence in action by principal against agent (*h*).

Formal commencement: see ante No. 410.

Statement of Defence.

1. The defendants deny that the said commission of —— per cent. mentioned in paragraph 4 of the statement of claim is the

(*h*) See R. S. C. App. (C), form No. 5. For a statement of the claim to which this is a defence, see No. 410 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

rate of commission ordinarily charged by *del credere* agents in the said trade, and say that the same is the ordinary commission for agents other than *del credere* agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers.

2. The defendants deny that they were ever liable to the plaintiffs as *del credere* agents.

3. With respect to the eighth paragraph of the plaintiffs' statement of claim, the defendants say that at the time of the said sale to the said G. H., the said G. H. was a person in good credit. If it be true that the said G. H. was then in insolvent circumstances (which the defendants do not admit), the defendants did not know and had no reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante*].

432. Statement of defence in action on a bill of exchange (*i*).

Formal commencement: see ante No. 411.

Statement of Defence.

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances hereinafter stated, and except as hereinafter mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. M. N. & Co., the drawers thereof, and the defendants, that the said Messrs. M. N. & Co. should sell and deliver to the defendants free on board ship at the port of —— 1,200 tons of coals during the month of ——, and that the defendants should pay for the same by accepting the said Messrs. M. N. & Co.'s draft for £—— at six months.

3. The said Messrs. M. N. & Co. accordingly drew upon the defendants, and the defendants accepted, the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. M. N. & Co. of the said 1,200 tons of coals under their said contract, and the time for delivery has long since elapsed; but the said Messrs. M. N. & Co. never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendants' acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them, after it was overdue.

(*i*) See R. S. C. App. (C), form No. 6. For a statement of the claim to which this is a defence, see No. 411 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the second, third, and fourth paragraphs hereof.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

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433. Statement of defence in action on a bill of lading (*k*).

Formal commencement: see ante No. 413.

Statement of Defence.

1. The defendants deny the truth of the allegations contained in the sixth, seventh, and eighth paragraphs of the statement of claim.

2. The deterioration, if any, to the cotton seed was occasioned by the character and quality of the cotton seed when shipped on board the "Ida," and by the inherent qualities of the cotton seed, and by shipping water in a severe storm which occurred on the —— day of —— in latitude —— during the voyage, or by some or one of such causes.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

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434. Statement of defence in action for false imprisonment (*l*).

Formal commencement: see ante No. 415.

Statement of Defence.

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorised or assented to his being given into custody. The said X. Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.

2. At some time about five or six o'clock on the ——, being the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the —— the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business

(*k*) See R. S. C. App. (C), form No. 8. For a statement of the claim to which this is a defence, see *ante* No. 413. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

(*l*) See R. S. C. App. (C), form No. 13. For a statement of the claim to which this is a defence, see *ante* No. 415. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

in or near, the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X. Y. for what purpose he had been in the shed and behind the stack of timber, and he denied having been in either place. X. Y. had reasonable and probable cause for suspecting, and did suspect, that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

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435. Statement of defence in a foreclosure action disclaiming all interest in the mortgaged premises (*m*).

187—. W. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between R. W. . . . . Plaintiff,
and
O. S. and J. B. . . . Defendants.

Statement of Defence of the above-named Defendant J. B.

1. The defendant J. B. does not claim any estate, right, title, or interest, legal or equitable, in the premises comprised in the mortgage indenture dated the 21st day of March, 1867, stated in the first paragraph of the statement of claim in this action. Before the institution of this action the defendant J. B. offered to the plaintiff to disclaim [*Or*, If the defendant J. B. had been applied to by the plaintiff before the institution of this action he would have disclaimed] all estate, right, title, or interest that the said J. B. may have in the said premises.

2. Under the circumstances aforesaid, the said J. B. submits that the plaintiff ought to be ordered to pay his costs of this action (*n*).

3. The said defendant J. B. reserves all rights to which he may

(*m*) For a statement of the claim to which this is a defence, see No. 416 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217. The proper course for the plaintiff to adopt where a statement of defence is delivered disclaiming all interest in the subject-matter of the action, seems to be to move under R. S. C. Ord. XL. 11, as upon an admission in the pleadings. For forms of foreclosure order absolute in the first instance against defendants disclaiming, see Seton, ed. 3, vol. i. p. 395. As to disclaimers in general, see Dan. Pr. 612 to 617. The disclaimer should be confined to a disclaimer so far as the plaintiff's interest is concerned; *Jolly* v. *Arbuthnot*, 4 D. & J. 243.

(*n*) As to costs, see Dan. Pr. 616, 617, and *Day* v. *Gudgen*, 2 Ch. D. 209.

be entitled under the mortgage indenture dated the 1st day of April, 1867, stated in the second paragraph of the statement of claim in this action as against the said defendant O. S., either upon the covenants of the said O. S. therein contained, or in the hereditaments and premises comprised in the said indenture, other than and besides those comprised in the said indenture of the 25th day of March, 1867, or in the hereditaments and premises comprised in the said indenture of the 25th day of March, 1867, in the event of the said defendant O. S. redeeming the plaintiff's charge by payment of the principal moneys and interest secured by the said last-mentioned indenture (*o*).

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

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436. Statement of defence in an action for fraudulent misrepresentation (*p*).

Formal commencement: see ante No. 417.

Statement of Defence.

1. The defendant says that at the time when he made the representations mentioned in the third paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over twelve sacks a week. And the defendant denies the allegations of the sixth paragraph of the statement of claim.

2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, showing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

(*o*) The disclaimer should be confined to a disclaimer so far as the plaintiff's interests are concerned; *Jolly* v. *Arbuthnot*, 4 D. & J. 243.

(*p*) See R. S. C. App. (C), form No. 15. For a statement of the claim to which this is a defence, see No. 417 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

437.
Statement of defence in an action for negligence of defendant's servants (*q*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
E. F. . . . Defendant.

Statement of Defence.

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to Mr. John Smith, of ——, a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was were the servants of the said Mr. John Smith.

2. The defendant does not admit that the van was turned out of Fleet Street, either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the statement of claim.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

438.
Statement of defence in an action on a promissory note (*r*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
E. F. . . . Defendant.

Statement of Defence.

1. The defendant made the note sued upon under the following circumstances:—The plaintiff and defendant had for some years been in partnership as coal merchants, and it had been agreed between them that they should dissolve partnership, that the

(*q*) See R. S. C. App. (C), form No. 20. For a statement of the claim to which this is a defence, see No. 420 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

(*r*) See R. S. C. App. (C), form No. 22. For a statement of the claim to which this is a defence, see *ante* No. 421. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

plaintiff should retire from the business, that the defendant should take over the whole of the partnership assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership books, and inquire into the state of the partnership assets and liabilities; and he did accordingly examine the books, and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded £10,000, and that the liabilities of the firm were under £3,000, whereas the fact was that the assets of the firm were less than £5,000, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph induced the defendant to make the note now sued on, and there never was any other consideration for the making of the note.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante*].

439.

Statement of defence in an action for the recovery of the possession of land, and for mesne profits (*s*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. and C. D. . . Plaintiffs,
and
E. L. . . . . Defendant.

Statement of Defence.

1. The defendant is the eldest son of I. L. deceased, who was the eldest son of K. L., in the statement of claim named.

2. By articles (*t*) bearing date the 31st day of May, 1827, and made previous to the marriage of K. L. with Martha his intended wife, K. L., in consideration of such intended marriage, agreed to settle the house and two farms in the statement of claim mentioned (and of which he was then seised in fee) to the use of himself for his life, with remainder to the use of his intended wife for her life, and after the survivor's decease, to the use of the heirs of the body of the said K. L. on his wife begotten, with other remainders over.

3. The marriage soon after took effect, and K. L., by deeds of lease and release (*t*), bearing date respectively the 4th and 5th of

(*s*) See R. S. C. App. (C), form No. 25. For a statement of the claim to which this is a defence, see *ante* No. 423. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

(*t*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and *supra*, p. 218.

April, 1828, after reciting the articles, in alleged performance of them, conveyed the house and two farms to the use of himself for his life, with remainder to the use of his wife for her life, and after the decease of the survivor of them, to the use of the heirs of the body of K. L. on the said Martha to be begotten, with other remainders over.

4. There was issue of the marriage an only son, Thomas L——, and two daughters. After the death of Thomas L——, which took place in February, 1864, K. L., on the 3rd of May, 1864, executed a disentailing assurance, which was duly enrolled, and thereby (*t*) conveyed the house and two farms to the use of himself in fee.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante*].

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440. Statement of defence in an action for trespass to land (*u*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
E. F. . . . Defendant.

Statement of Defence.

1. The defendant says that the road was and is a public highway for horses and carriages; and a few days before the 5th March, 1876, the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and it did obstruct and prevent the use of the road as a highway. And the defendant, on the said 5th March, 1876, caused the said gate to be removed, in order to enable him lawfully to use the road by his horses and carriages as a highway.

2. The defendant denies the allegations of the fifth paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence other than was necessary to enable the defendant lawfully to use the said highway.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

(*t*) See note (*t*) at p. 253.

(*u*) See R. S. C. App. (C), form No. 27. For a statement of the claim to which this is a defence, see *ante* No. 424. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

Section III.—Counter-claim and Set-off (*a*).

(*a*) A counter-claim is a pleading whereby a defendant claims some remedy or relief, either against the plaintiff alone, or against the plaintiff together with some other person or persons, whether already parties to the action or not; *Treleven* v. *Bray*, 45 L. J. Ch. 113, *per* Blackburn, J., at p. 115; *Warner* v. *Twining*, 24 W. R. 536; *Furness* v. *Booth*, 4 Ch. D. 586; *Harris* v. *Gamble*, 6 Ch. D. 748; *Turner* v. *Hednesford Gas Co.*, 3 Ex. D. 145, *per* Cleasby, B., at p. 146. A pleading which asks no relief against the plaintiff, either alone or together with some other person, is not a counter-claim; *Furness* v. *Booth*, 4 Ch. D. 586; *Harris* v. *Gamble*, 6 Ch. D. 748; *Shepherd* v. *Beane*, 2 Ch. D. 223, can no longer be considered of authority; *Furness* v. *Booth*, *ubi sup.*; *Harris* v. *Gamble*, *ubi sup.* By the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 24, subsec. 3, it is provided that the High Court of Justice and the Court of Appeal, and every Judge thereof shall have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right, or title, claimed or asserted by him, all such relief against any plaintiff as such defendant shall have properly claimed by his pleading, and as the said Courts respectively or any Judge thereof might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff. By the Rules of the Supreme Court it is provided, that a defendant in an action may set-off, or set up by way of counter-claim, against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and that such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim; R. S. C. Ord. XIX. 3. These provisions are aimed against a multiplicity of suits, and the construction to be put upon them should be as wide as possible; *Turner* v. *Hednesford Gas Co.*, 26 W. R. 308; 3 Ex. D. 145, *per* Brett, L. J., at p. 151. Under these provisions a defendant may set up a claim which he has against the plaintiffs jointly, or against either of them singly; *Manchester & Sheffield Ry. Co.* v. *Brooks*, 2 Exch. D. 243; or a claim which he has against the plaintiff jointly with any other person or persons, whether such last-named person or persons be already parties to the action or not; see R. S. C. Ord. XXII. 5, 6; R. S. C. App. (C), form No. 14; *Dear* v. *Sworder*, 4 Ch. D. 476; in an action on a contract, the defendant may set up a counter-claim for the non-performance by the plaintiff of the contract on his part, and may join as party to this counter-claim, a person who had become surety for the due performance of the contract by the plaintiff; *Turner* v. *Hednesford Gas Co.*, 3 Ex. D. 145 (C. A.); and see *Hodson* v. *Mochi*, 26 W. R. 590. It is not necessary that the amount of the counter-claim should equal the amount of the plaintiff's claim; the counter-claim will be good if it show a right to any amount of debt or damages whatever; *Mostyn* v. *West Mostyn Coal & Iron Co.*, 1 C. P. D. 145. But the power of the defendant to set up a counter-claim is subject to the power of the Court to order the counter-claim to be excluded; R. S. C. Ord. XIX. 3; *Ibid.*, Ord. XXII. 9; *Padwick* v. *Scott*, 2 Ch. D. 736. Where a defendant sets up a counter-claim he becomes in the position of a plaintiff in a cross action; *Winterfield* v. *Bradnum*, 26 W. R. 353, 472. If the set-off or counter-claim be established, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of

the case; R. S. C. Ord. XXII. 10. The damages which the defendant is entitled to recover in respect of the matters stated in his counter-claim, will be calculated only up to the date of the issuing of the writ in the original action; *Original Hartlepool Collieries Co.* v. *Gibb*, 5 Ch. D. 713. The relief or remedy to which the defendant may be entitled in respect of the matters mentioned in the counter-claim can be given only on the trial of the action, when the plaintiff's claim is dealt with and disposed of, and not on a motion under Ord. XL. rule 11; *Rolfe* v. *Maclaren*, 3 Ch. D. 106. Section 5 of the County Courts Act, 1867 (30 & 31 Vict. c. 142), does not apply to the amount recovered by the defendant on a counter-claim; a counter-claiming defendant is, therefore, entitled to the costs of the counter-claim, though he recovers less than £20, where the counter-claim is in respect of a breach of contract, or less than £10, where it is in respect of a tort; *Blake* v. *Appleyard*, 26 W. R. 592. Another consequence of the defendant becoming in the position of a plaintiff is, that if he be resident out of the jurisdiction, he will be ordered to give security for costs; *The Julia Fisher*, 2 P. D. 115; and such security must extend to the costs of the whole action, and not of the counter-claim merely; *The J. Fisher*, *ubi sup.* As to the mode of obtaining and enforcing an order for security for costs, giving security, &c., see *post* Chap. XXIX., p. 966. If default be made by a defendant in obeying an order to give security, the counter-claim will be dismissed; *The J. Fisher*, *ubi sup.*: for form of application to dismiss where default is made, see *ante* No. 1819. Where a defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he must, in his statement of defence, state specifically that he does so by way of set-off or counter-claim; R. S. C. Ord. XIX. 10; *Hildman* v. *Mayhew*, 24 W. R. 485; *Crowe* v. *Barnicott*, 25 W. R. 789; 6 Ch. D. 753; but it is not necessary that a set-off or counter-claim should be separated by a marked line from the defence, or that the paragraphs in which the facts relied upon as giving the right to set-off or counter-claim are stated, should be differently numbered; it is only necessary that there should be a specific statement of the facts relied upon; *Lees* v. *Patterson*, 26 W. R. 399; 7 Ch. D. 866. The counter-claim must be as brief as the nature of the case will admit; R. S. C. Ord. XIX. 2; and must contain, as concisely as may be, a statement of the material facts on which the defendant relies, but not the evidence by which they are to be proved; *Ibid.*, rule 4; but the defendant need not allege any matter of fact which the law presumes in his favour, or as to which the burthen of proof lies upon the plaintiff, unless the same has first been specifically denied; *Ibid.*, rule 28. Where the defendant relies upon several distinct grounds of set-off or counter-claim founded upon separate and distinct facts, such facts must be stated separately and distinctly; R. S. C. Ord. XIX. 9. Every counter-claim must state specifically the relief which the defendant claims, either simply or in the alternative, and may also ask for general relief; R. S. C. Ord. XIX. 8. It is advisable always to insert a general claim for relief, as, where this is not done, the defendant will be restricted to the relief which he has specifically claimed; *Holloway* v. *York*, 25 W. R. 627. The facts stated in the counter-claim need not be assigned to any particular claim for relief; so long as they tend to show that the defendant is entitled to any one of the reliefs claimed, or (if there be a general claim for relief) to any relief at all, the paragraph containing them is not demurrable; *Watson* v. *Hawkins*, 24 W. R. 884. As to the mode of alleging the contents of a document, a condition of the mind of any person, notice, or the making of any contract or the creation of any relation which does not arise from an express agreement, but is to be implied from a number of circumstances, see

441. Statement of defence and counter-claim (*b*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge.*]

Between A. B. and C. D. . . . Plaintiffs,

and

E. F. and G. H. . . . Defendants.

Statement of Defence and Counter-claim.

1. By the charter-party sued upon it was expressly provided that if any accident should happen to, or any repairs should become necessary to the engines or boilers of, the said steamship,

R. S. C. Ord. XIX. rules 24, 25, 26, 27, and *supra*, p. 218. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217. Where the counter-claim raises questions between the defendant and the plaintiff along with any other person or persons, the defendant must add to the title of his defence a further title similar to that in a statement of claim, setting forth the names of all persons, who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action; R. S. C. Ord. XXII. 5; and see *post* No. 443. A counter-claim must be delivered to the plaintiff within the time limited for delivering a defence; see R. S. C. Ord. XXII. rules 1, 2, 3; and *ante* No. 425, note (*b*); by being left for him or for his solicitor at the address for service; R. S. C. Ord. XIX. 6; Cons. Ord. III. 4, 6, and note (*a*) at p. 217. Where a party to the action as co-defendant is named as co-defendant to the counter-claim, the counter-claim must be delivered to him within the same period within which it must be delivered to the plaintiff; R. S. C. Ord. XXII. 5; where such party has appeared, the counter-claim is delivered by being left at the address for service for such party or his solicitor; R. S. C. Ord. XIX. 6; Cons. Ord. III. 4, 6; where such party has not appeared the counter-claim may be delivered by being filed with the Record and Writ Clerk, where the action is proceeding in London, or with the district registrar, where the action is proceeding in a district registry; R. S. C. Ord. XIX. 6, 29. Where a person named as co-defendant with the plaintiff to a counter-claim is not a party to the original action, he must be summoned to appear by being served with a copy of the counter-claim, with an indorsement thereon; R. S. C. Ord. XXII. 6; for form of indorsement, see *post* No. 444. Such service is regulated by the same rules as those with respect to the service of a writ of summons; R. S. C. Ord. XXII. 6; as to the service of a writ of summons, see R. S. C. Ords. IX., X., and XI., and *ante*, p. 136, note (*a*); p. 138, note (*d*); and p. 142, note (*r*). No time is limited by R. S. C. Ord. XXII., for such service being effected, but probably it must be effected within the time within which it must be delivered to the plaintiff. The person served must, if he wishes to dispute the defendant's claim, enter an appearance in the same manner as if he had been served with a writ of summons, and deliver a statement of reply or a demurrer to the counter-claim; R. S. C. Ord. XXII. 7, 8; Ord. XXVIII. 1; in default of his delivering a reply or demurrer, the defendant may apply to the Court or a Judge for judgment; R. S. C. Ord. XXIX. 13.

(*b*) See R. S. C. App. (C), form No. 10. For a statement of the claim to which this is a defence and counter-claim, see No. 414 *ante*. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

the time occupied in repairs should be deducted from the period of the said charter, and a proportionate reduction in the charter-money should be made.

2. On the —— repairs became necessary to the engines and boilers of the steamship, and ten days were occupied in effecting such repairs.

3. On the —— an accident happened to the engines of the steamship at Mauritius, and two days were occupied in effecting the repairs necessary in consequence thereof.

4. The defendants are therefore entitled to a reduction in the charter money of £400.

By way of set-off and counter-claim the defendants claim as follows (*c*) :—

5. By the charter-party it was expressly provided that the charterers should furnish funds for the steamship's necessary disbursements, except in the port of Calcutta, without any commission or interest on any sum so advanced.

6. The defendants paid for the necessary disbursements of the ship in the port of Mauritius between the —— and the ——, 1874, sums amounting in all to £625 14*s.* 6*d.*

7. The charter-party also contained an express warranty that the steamship was at the date thereof capable of steaming nine knots an hour on a consumption of 30 tons of coal a day, and it was further provided by the charter-party that the charterers should provide coal for the use of the said steamship.

8. The steamship was at the date of the charter-party only capable of steaming less than eight knots to an hour, and that only on a consumption of more than 35 tons of coal a day.

9. In consequence of the matters mentioned in the last paragraph, the steamship finally arrived at Calcutta at least fifteen days later, and remained under charter at least fifteen days longer, than she would otherwise have done. She was also during the whole period of the said charter at sea for a much larger number of days than she would otherwise have been, and consumed a much larger quantity of coal on each of such days than she would otherwise have done, whereby the defendants were obliged to provide for the use of the steamship much larger quantities of coal than they would otherwise have been.

The defendants claim (*d*) :—

£—— damages in respect of the matters stated in this set-off and counter-claim.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

(*c*) See R. S. C. Ord. XIX. 10 ; *Hillman* v. *Mayhew*, 24 W. R. 485 ; *Crowe* v. *Barnicott*, 6 Ch. D. 753 ; *Lees* v. *Patterson*, 26 W. R. 399 ; 7 Ch. D. 866 ; and *ante* p. 256.

(*d*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *ante* p. 256.

442.
Statement of defence and counter-claim in action for the recovery of the possession of a house, and for mesne profits (*e*).

In the High Court of Justice, Chancery Division. 187—. B. No. .
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Statement of Defence and Counter-claim.

1. Before the determination of the tenancy mentioned n the statement of claim, the plaintiff A. B., by writing dated the —— day of ——, and signed by him, agreed to grant to the defendant C. D. a lease of the house mentioned in the statement of claim, at the yearly rent of £150, for the term of twenty-one years, commencing from the —— day of ——, when the defendant's tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

2. By way of counter-claim the defendant claims to have the agreement specifically performed and to have a lease granted to him accordingly.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

443.
Statement of defence and counter-claim in a foreclosure action (*f*).

187—. W. No. .
In the High Court of Justice, Chancery Division.
[*Name of Judge.*]
Between R. W. . . . . Plaintiff,
and
O. S. and J. B. . . . Defendants,
(by original action)
And between the said O. S. . . . Plaintiff,
and
The said R. W. and J. B., and J. W. . Defendants (*g*),
(by counter-claim.)

(*e*) See R. S. C. App. (C), form No. 24. For a statement of the claim to which this is a defence and counter-claim, see *ante* No. 422. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217.

(*f*) See R. S. C. App. (C), form No. 14. For a statement of the claim to which this is a defence and counter-claim, see *ante* No. 416. As to the formal parts, see R. S. C. Ord. XIX. 4, 7; Ord. XXII. 5; and *ante* pp. 217, 257. This defence and counter-claim must be delivered not only to the plaintiff, but also to the defendant, J. B.; R. S. C. Ord. XXII. 5; *ante* p. 257; and a copy with an indorsement thereon (see *post* No. 444) must be served on J. W. in the same manner as writs of summons are served; R. S. C. Ord. XXII. 6, and *ante* p. 257.

(*g*) As this counter-claim raises questions between the defendant, O. S., and

Statement of Defence and Counter-claim of the above-named O. S.

1. This defendant does not admit that the contents of the indenture of the 25th day of March, 1867, in the plaintiff's statement of claim mentioned, are correctly stated therein.

2. The indenture of the 1st day of April, 1867, in the statement of claim mentioned, was not a security for the sum of £15,000 and interest at £5 per cent. per annum, but for the sum of £14,000 only, with interest at the rate of £4 10s. per cent. per annum.

3. This defendant submits that under the circumstances in his counter-claim mentioned, the said indentures of the 25th day of March, 1867, and the 1st day of April, 1867, did not create any effectual security upon the mines and minerals in and under the lands in the same indentures comprised, and that the same mines and minerals ought to be treated as excepted out of the said securities.

And by way of counter-claim this defendant states as follows (*h*):

1. At the time of the execution of the indenture next hereinafter stated, J. C. A. was seised in fee simple in possession of the lands described in the said indentures, and the mines and minerals in and under the same.

2. By indenture (*j*), dated the 24th of March, 1860, made between the said J. C. A. of the first part, E. his wife, then E. S., spinster, of the second part, and this defendant and the above-named J. W. of the third part, being a settlement made in contemplation of the marriage, shortly after solemnized, between the said J. C. A. and his said wife, the said J. C. A. granted to this defendant and the said J. W., and their heirs, all the coal mines, beds of coal, and other the mines and minerals under the said lands, with such powers and privileges as in the now-stating indenture mentioned, for the purpose of winning, working, and getting the same mines and minerals, to hold the same premises to this defendant and the said J. W., and their heirs, to the use of the said J. C. A., his heirs and assigns, till the solemnization of the said marriage, and after the solemnization thereof to the use of this defendant and the said J. W., their executors and administrators, for the term of 500 years, from the day of the date of the now-stating indenture, upon the trusts therein mentioned, being trusts for the benefit of the said J. C. A., and his wife and the children of their marriage,

the plaintiff along with other persons, a further title must be added setting forth the names of all the persons who, if such counter-claim were to be enforced by a cross action, would be defendants thereto; R. S. C. Ord. XXII. 5.

(*h*) See R. S. C. Ord. XIX. 10; *Hillman* v. *Mayhew*, 24 W. R. 485; *Crowe* v. *Barnicott*, 6 Ch. D. 753; *Lees* v. *Patterson*, 26 W. R. 399; 7 Ch. D. 866; *ante* p. 256.

(*j*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and *ante* p. 218.

and from and after the expiration or other determination of the said term of 500 years, and in the meantime subject thereto, to the use of the said J. C. A., his heirs and assigns for ever.

3. By indenture (*j*), dated the 12th of May, 1860, made between the said J. C. A. of the one part, and W. N. of the other part, the said J. C. A. granted to the said W. N., and his heirs, the said lands, except the coal mines, beds of coal, and other mines and minerals thereunder, to hold the same premises unto and to the use of the said W. N., his heirs and assigns, for ever, by way of mortgage, for securing the payment to the said W. N., his executors, administrators, or assigns, of the sum of £26,000, with interest as therein mentioned.

4. On the 14th of January, 1864, the said J. C. A. was adjudicated a bankrupt, and shortly afterwards J. L. was appointed creditor's assignee of his estate.

5. Some time after the said bankruptcy, the said W. N., under a power of sale in his said mortgage deed, contracted with this defendant for the absolute sale to this defendant of the property comprised in his said security for an estate in fee simple in possession, free from incumbrances, for the sum of £26,000, and the said J. L., as such assignee as aforesaid, agreed to join in the conveyance to this defendant for the purpose of signifying his assent to such sale.

6. By indenture (*j*), dated the 1st of September, 1866, made between the said W. N. of the first part, the said J. L. of the second part, the said J. C. A. of the third part, and this defendant of the fourth part, reciting the said agreement for sale, and reciting that the said J. L., being satisfied that the said sum of £26,000 was a proper price, had, with the sanction of the Court of Bankruptcy, agreed to confirm the said sale, it was witnessed that in consideration of the sum of £26,000, with the privity and approbation of the said J. L., paid by this defendant to the said W. N., he the said W. N. granted, and the said J. C. A. ratified and confirmed to this defendant and his heirs, all the hereditaments comprised in the said security of the 12th day of May, 1860, with their rights, members, and appurtenances, and all the estate, right, title, and interest of them, the said W. N. and J. C. A. therein, to hold the same premises unto and to the use of this defendant, his heirs and assigns, for ever.

7. The sale of this defendant was not intended to include anything not included in the security of the 12th of May, 1860, and the said J. L. only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him; and the lastly herein-

(*j*) As to the mode of stating the contents of a document, see R. S. C. Ord. XIX. 24, and *ante* p. 218.

before stated indenture did not vest in this defendant any estate in the said mines and minerals.

8. The plaintiff and the defendant J. B. respectively had before they advanced to this defendant the moneys lent by them on their securities in the plaintiff's claim mentioned, full notice that the mines and minerals under the said lands did not belong to this defendant. This fact appeared on the abstracts of title delivered to them before the preparation of their said securities. A valuation of the property made by a surveyor was furnished to them respectively on behalf of this defendant before they agreed to advance their money on their said securities; but although the said lands are in a mineral district, the mines and minerals were omitted from such valuation, and they respectively knew at the time of taking their said securities that the same did not include any interest in the mines and minerals.

9. At the time when the securities of the plaintiff and the defendant J. B. were respectively executed, the plaintiff and the defendant J. B. respectively had notice of the said indenture of settlement of the 24th day of March, 1860.

10. At the time when the plaintiff's security was executed, the mines and minerals under the said lands, with such powers and privileges as aforesaid, were vested in this defendant and the said J. W. for the residue of the said term of 500 years, and subject to the said term, the inheritance in the same mines, minerals, powers, and privileges was vested in the said J. L. as such assignee as aforesaid.

11. The said security to the plaintiff was by mistake framed so as to purport to include the mines and minerals under the said lands, and by virtue thereof the legal estate in a moiety of the said mines and minerals became and now is vested in the plaintiff for the residue of the said term of 500 years.

The defendant O. S. claims as follows (*k*):

1. That it may be declared that neither the plaintiff nor the defendant J. B. has any charge or lien upon that one undivided moiety, which in manner aforesaid became vested in the plaintiff for the residue of the said term of 500 years, of and in the mines and minerals in and under the lands mentioned in the plaintiff's said security.

2. That it may be declared that the said mines and minerals, rights, and privileges, which by the said indenture of settlement were vested in the defendant O. S. and the said J. W. for the said term of 500 years, upon trust as therein mentioned, ought to be so conveyed and assured as that the same may become vested in the

(*k*) As to the claim for relief, see R. S. C. Ord. XIX. 8, and *ante* p. 256.

defendant O. S. and the said J. W. for all the residue of the said term upon the trusts of the said settlement.

3. That the said R. W. and J. W. may be decreed to execute all such assurances as may be necessary for giving effect to the declaration secondly hereinbefore prayed.

4. To have such further or other relief as the nature of the case may require.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante*].

444.

Indorsement on counter-claim for service on a person not a party to the original action (*l*).

To the within-named J. W., of [*residence and addition*].

Take notice that if you do not appear to the within counter-claim of the within-named O. S., within —— (*m*) days from the service of this defence and counter-claim on you, you will be liable to have judgment given against you in your absence.

Appearances are to be entered at

[*If the action is proceeding in London, say:*] the Record and Writ Clerk's Office, Chancery Lane, London.

[*If the action is proceeding in a district registry, say:*] the District Registry at ——, in the county of ——.

445.

Motion paper for leave to serve defence and counter-claim on a person not a party to the original action out of the jurisdiction (*n*).

Formal parts: see post No. 1570; *for title, see ante* No. 443.

To move on behalf of the defendant O. S., that he may be at liberty to serve a copy of his defence and counter-claim in this action on J. W. at ——, in the (kingdom) of ——, out of the jurisdiction of the Court.

(*l*) Where any person named as co-defendant with the plaintiff to a counter-claim, is not a party to the original action, he must be summoned to appear to the counter-claim by being served with a copy of the defence with an indorsement thereon; R. S. C. Ord. XXII. 6. For form of indorsement, see R. S. C. App. (B), form No. 4. Such service is regulated by the same rules as the service of a writ of summons; R. S. C. Ord. XXII. 6; as to the service of a writ of summons, see R. S. C. Ords. IX. X. and XI.; and *ante* pp. 136, note (*a*), 138, note (*d*), 142, note (*r*). For form of application for leave to serve the counter-claim out of the jurisdiction, see *post* No. 445.

(*m*) The appearance must be entered within the same time as an appearance to a writ of summons in an action; R. S. C. Ord. XXII. 7; *i.e.*, if the person on whom the counter-claim is served be resident within the jurisdiction, within eight days from the service; R. S. C. App. (A), Part I., form No. 1; App. (B), form No. 4; but if such person be resident out of the jurisdiction, then within the time limited by the order giving leave to serve the counter-claim out of the jurisdiction; see R. S. C. Ord. XI. 4; and App. (A), Part I. form No. 2.

(*n*) Where a person named as co-defendant with the plaintiff to a counter-claim not being a party to the original action is resident out of the jurisdiction, leave must be obtained to serve the counter-claim in the same manner as if it were a writ of summons; R. S. C. Ord. XXII. 6; see R. S. C. Ord. XI. The application must be supported by an affidavit; see No. 446 *post*.

446.
Affidavit in support (*o*).

Formal parts : see post No. 693 ; *for title, see ante* No. 443.

1. The counter-claim set up by the defendant O. S. in this action against the plaintiff, the defendant J. B. and J. W. of [*residence and addition*], is for [*Here state the nature of the counter-claim made by the defendant O. S. ; see ante* No. 290, *paragraph* 1]. I am advised, and verily believe, that I [*Or*, the said defendant O. S.] have [*Or*, has] a good cause of action against the said R. W., J. B., and J. W., in respect of the matters aforesaid.

2. The said J. W. resides, or may probably be found, at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court.

447.
Memorandum of ordinary appearance to counter-claim (*p*).

Title as in No. 443 *ante.*

Enter an appearance for J. W. to the counter-claim of the above-named O. S.

Dated [*Conclude as in* No. 294 *ante*].

448.
Notice of appearance.

Formal parts : see ante No. 21 ; *for title, see ante* No. 443.

Take notice that I have this day entered an appearance on behalf of J. W. to the counter-claim of O. S.

(*o*) As to the contents of this affidavit, see R. S. C. Ord. XI. rules 1, 1*a*, 3 ; and No. 290 *ante*, and the notes thereto.

(*p*) A person who is served with a counter-claim, if he is a party to the original action, need not enter any appearance to the counter-claim ; see R. S. C. Ord. XXII. 7 ; but may, without entering any appearance, apply to exclude the counter-claim ; R. S. C. Ord. XIX. 3 ; Ord. XXII. 9 ; or may deliver a statement of reply thereto ; R. S. C. Ord. XXII. 8 ; or a demurrer ; R. S. C. Ord. XXVIII. 1. But a person not a party to the original action who is served with a counter-claim must appear thereto, as if he had been served with a writ of summons to appear in an action ; R. S. C. Ord. XXII. 7. If such person intends to apply to exclude the counter-claim, or to set aside the service thereof, he should enter a conditional appearance with the Registrar ; see forms Nos. 449 to 451 *post*. If he intends to contest the claim upon the merits, he should enter an appearance in the ordinary form with the Record and Writ Clerk (where the action is proceeding in London), or the district registrar (when the action is proceeding in a district registry), and should deliver a statement of reply to the counter-claim ; R. S. C. Ord. XXII. 8 ; or a demurrer thereto ; R. S. C. Ord. XXVIII. 1. On entering the appearance a fee of 2*s.* is payable for each person ; Ord. as to Court fees, Oct. 1875, sched. ; Wilson, 506 ; this is payable by means of a stamp impressed on the memorandum, and where the appearance of more than one person is entered by the same memorandum, the fees for all persons beyond the first may be denoted by means either of impressed or of adhesive stamps ; Ord. as to Fees, April, 1876, sched. ; Wilson, 522.

449.

Motion paper for leave to enter conditional appearance to counter-claim (*q*).

Formal parts : see post No. 1570 ; *for title, see ante* No. 443.

To move on behalf of J. W., who has been served with a counter-claim of O. S., and intends to apply to exclude such counter-claim [*Or*, intends to apply to set aside such service], that he may be at liberty to enter a conditional appearance with the Registrar upon the usual submission.

450.

Petition of course for the like (*q*).

Formal parts : see post No. 1576 ; *for title, see ante* No. 443.

The humble petition of J. W., of [*residence and addition*].

Showeth as follows :

1. Your petitioner has been served with a counter-claim of O. S.

2. Your petitioner is advised that he is entitled to have such counter-claim excluded [*Or*, to have such service set aside], and is desirous to enter an appearance to such counter-claim with the Registrar preparatory to an application for excluding the same [*Or*, for setting aside the same] to this honourable Court.

Your petitioner therefore humbly prays that he may be at liberty to enter an appearance to the said counter-claim with the Registrar upon the usual submission.

And your petitioner will ever pray, &c.

451.

Memorandum of entry of conditional appearance (*r*).

—— day of ——, 187— [*Date of entering appearance*].

187—. W. No. .

R. W. *v.* O. S. and J. B. [by original action].

O. S. *v.* R. W., J. B., and J. W. [by counter-claim].

J. W., of [*residence and addition*], has this day entered his conditional appearance to the counter-claim of the defendant O. S. by Mr. X. Y., of [*place of business*], his solicitor.

X. Y.,

Solicitor for the said J. W.

(*q*) Where the person served with a counter-claim intends to apply to exclude such counter-claim, or to set aside the service thereof, it would seem, by analogy to the practice with reference to applications to set aside a writ of summons or the service thereof, that he should enter a conditional appearance with the Registrar, and not an ordinary appearance with the Record and Writ Clerk, or the district registrar ; see Dan. Pr. 459, and *ante* p. 150, note (*k*). In order to enter a conditional appearance, an order must be obtained giving leave to do so ; the order may be obtained on an *ex parte* motion, or petition of course ; see *ante*, p. 150, note (*k*).

(*r*) For the mode of entering a conditional appearance, see *ante* No. 302, and note (*k k*).

452.

Notice of motion or summons to exclude counter-claim (*s*).

Formal parts: see post No. 1571 *or* 881; *for title, see ante* No. 443.

on the part of the plaintiff; *Or*,

on the part of the defendant J. B., who has been served with a counter-claim of the defendant O. S; *Or*,

on the part of J. W., who has been served with a counter-claim of the defendant O. S., and has entered a conditional appearance thereto;

that the counter-claim of the defendant O. S. in this action

[*If it is sought to exclude part only of the counter-claim set up, add:*] whereby he claims [*specify the particular claim sought to be excluded*],

may be excluded; and that the said defendant O. S. may be ordered to pay the costs of and occasioned by the said counter-claim, and of this application.

453.

Notice of motion or summons to set aside service of counter-claim on a person not a party to the action (*t*).

Formal parts: see post No. 1571 *or* 881; *for title, see ante* No. 443.

on the part of J. W., who has been served with a counter-claim of the defendant O. S., and has entered a conditional appearance thereto, that the service of the said counter-claim on the said J. W. at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court, and the conditional appearance thereto, entered by the said J. W. with the Registrar, may be set aside, on the ground that such service was effected without the leave of the Court or a Judge; and that the said defendant O. S. may be ordered to pay to the applicant his costs of entering a conditional appearance to the said counter-claim and of this application.

454.

Notice of motion or summons to discharge order for service of counter-claim out of jurisdiction, and to set aside service (*u*).

Formal parts: see post No. 1571 *or* 881; *for title, see ante* No. 443.

on the part of J. W., who has been served with a counter-claim of the defendant O. S., and has entered a conditional appearance thereto, that the order, dated the —— day of ——, 187—, made

(*s*) By the rules of the Supreme Court, Ord. XIX. 3, it is provided that where a defendant by his statement of defence sets up a set-off or counter-claim, the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof; and by Ord. XXII. 9, if the plaintiff or any other person named as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may, at any time before reply, apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just; see *Padwick* v. *Scott*, 2 Ch. D. 736.

(*t*) See R. S. C. Ord. XI. and Ord. XXII. 6.

(*u*) See No. 319 *ante*. For a form of affidavit in support, see No. 321 *ante*.

in this action, whereby liberty was given to serve the said counter-claim on the said J. W. at ——, in the (kingdom) of ——, out of the jurisdiction of this honourable Court, may be discharged, and that the service of the said counter-claim on the said J. W., and the conditional appearance thereto entered by the said J. W., may be set aside, on the ground that [*Here specify the ground on which it is sought to set aside the service; see ante* No. 319]. And that [*Conclude as in last Form*].

Section IV.—The Statement of Reply (*a*).

(*a*) Where the defendant has delivered a statement of defence, set-off, or counter-claim, the plaintiff may deliver a statement of his reply thereto; R. S. C. Ord. XIX. 1; Ord. XXIV. 1. Where the defendant has set up a counter-claim to which some person other than the plaintiff is named as a party, such person may deliver a reply thereto; R. S. C. Ord. XXII. 8; but he may not set up a counter-claim against the defendant; *Street* v. *Gover*, 2 Q. B. D. 498. In the reply the plaintiff or other person pleading must allege all such facts not appearing in the previous pleadings, as he means to rely upon, and must raise all such grounds of reply as, if not raised, would be likely to take the defendant by surprise, or would raise new issues of fact not arising out of the pleadings; R. S. C. Ord. XIX. 18; and where the defendant has set up a counter-claim, it will not be sufficient in the reply to deny generally the facts alleged by way of counter-claim; but the party pleading must deal specifically with each allegation of fact of which he does not admit the truth; *Ibid.*, rule 20; and if the party pleading denies an allegation of fact in the counter-claim, he must not do so evasively, but a fair and substantial answer must be given; *Ibid.*, rule 22; and every allegation of fact in the counter-claim, if not denied specifically, or by necessary implication, or stated to be not admitted, in the reply, will be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition; *Ibid.*, rule 17. For the cases decided upon these rules, see *ante* note (*a*) at pp. 242, 243. Subject to these rules the plaintiff in his reply may join issue on the defence; such joinder of issue will operate as a denial of every material allegation of fact in the defence, but the reply may except any facts which the plaintiff is willing to admit, and will then operate as a denial of the facts not so admitted; *Ibid.*, rule 21. The plaintiff may not in his reply raise any new ground of claim, or make any allegation of fact inconsistent with his statement of claim; *Ibid.*, rule 19. No new assignment may be used; but everything which under the old practice was alleged by new assignment may be introduced by way of amendment of the statement of claim; *Ibid.*, rule 14. In the cases of *Earp* v. *Henderson*, 3 Ch. D. 254, and *Hall* v. *Eve*, 4 Ch. D. 341, it was held that where the defendant has not by his defence set up a set-off or counter-claim, the plaintiff ought not to deliver a special reply, but should introduce any new facts by way of amendment of his statement of claim; these cases were, however, overruled by the Court of Appeal in *Hall* v. *Eve*, 4 Ch. D. 343, where it was held that the reply is the proper place for introducing new facts by way of avoidance of the defence, and that a plaintiff is entitled to reply either by traverse, or by confession and avoidance, or by both combined.

455.

Summons for further time to deliver statement of reply (*b*).

Formal parts : see post No. 881.
on the part of the plaintiff ; *Or,*
on the part of (the defendant) ——, who has been served with a counter-claim of the defendant —— ;
that he may have —— days further time to deliver his statement of reply to the statement of defence (and counter-claim) of the defendant —— ; and that the costs of this application may be costs in the action (*c*).

456.

Summons for leave to deliver statement of reply, notwithstanding that time has expired (*b*).

Formal parts : see post No. 881.
on the part of the plaintiff ; *Or,*
on the part of (the defendant) ——, who has been served with a counter-claim of the defendant —— ;
that notwithstanding the time limited has expired, he may be at liberty, on or before the —— day of ——, 187—, to deliver his statement of reply to the statement of defence (and counter-claim) of the defendant ; and that the costs of this application may be costs in the action (*c*).

(*b*) A plaintiff must deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered, unless the time be extended by the Court or a Judge ; R. S. C. Ord. XXIV. 1 ; if he does not do so the pleadings will be deemed to be closed at the expiration of that period, and the statements of fact in the defence will be deemed to be admitted ; R. S. C. Ord. XXIX. 12. A person other than the plaintiff named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim ; R. S. C. Ord. XXII. 8 ; *i. e.*, within eight days from the delivery to him of the counter-claim ; *Ibid.*, rule 1. In the computation of these times, the time of the long vacation is not reckoned ; R. S. C. Ord. LVII. 5 ; nor may any pleading be delivered in the long vacation, unless otherwise ordered by the Court or a Judge ; *Ibid.*, rule 4. The time allowed may be enlarged by the Court or a Judge, and such enlargement may be ordered notwithstanding the application for the same is not made until after the expiration of the time allowed ; *Ibid.*, rule 6.

(*c*) See note (*d*) to No. 402 *ante*.

457. Statement of reply (*d*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of A. B., deceased.
Between E. F. . . . . Plaintiff,
and
G. H. . . . . Defendant.

Reply.

The plaintiff joins issue with the defendant upon his defence.
Delivered the —— day of ——, 187—, by
X. Y., of [*place of business*], agent for
T. Z., of [*place of business*], solicitor for the plaintiff.
Or, E. F., of [*address*], plaintiff in person.

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458. Another form (*e*).

[*Heading and title as in* No. 457 *ante.*]
The plaintiffs join issue upon the defendant's statement of defence.
Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante.*]

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459. Another form (*f*).

[*Heading and title as in* No. 457 *ante.*]

Reply.

The plaintiffs join issue upon the statement of defence.
Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

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460. Another form (*g*).

[*Heading and title as in* No. 457 *ante.*]

Reply.

The plaintiffs join issue on the defence.
Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante.*]

(*d*) See R. S. C. App. (C), forms Nos. 2, 3. As to formal parts, see R. S. C. Ord. XIX. 4, 7; and *ante*, note (*a*) at p. 217.

(*e*) See R. S. C. App. (C), forms Nos. 5, 11, 13, 15, 20, 25, 27. As to formal parts, see R. S. C. Ord. XIX. 4, 7; and *ante*, note (*a*) at p. 217.

(*f*) See R. S. C. App. (C), forms Nos. 8, 19. As to formal parts, see R. S. C. Ord. XIX. 4, 7; and *ante*, note (*a*) at p. 217.

(*g*) See R. S. C. App. (C), form No. 22. As to formal parts, see R. S. C. Ord. XIX. 4, 7; and *ante*, note (*a*) at p. 217.

461.

Another form (*h*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . . Defendants.

Reply.

The plaintiff joins issue with the defendants upon their defence.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

462.

Another form (*j*).

[*Heading and title as in* No. 461 *ante.*]

Reply.

The plaintiff joins issue with the defendants upon their several defences.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

463.

Another form (*k*).

[*Heading and title as in* No. 461 *ante.*]

Reply.

1. The plaintiff joins issue upon the statement of defence of the defendant as contained in the first, second, third, fourth, and fifth paragraphs thereof.

2. The plaintiff admits the allegations contained in the sixth and seventh paragraphs of the said statement of defence.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

(*h*) See R. S. C. App. (C), form No. 4. As to formal parts, see R. S. C. Ord. XIX. 4, 7 ; and note (*a*) at p. 217.

(*j*) See R. S. C. App. (C), form No. 14. As to formal parts, see R. S. C. Ord. XIX. 4, 7 ; and note (*a*) at p. 217.

(*k*) See R. S. C. App. (C), forms 10, 23, 26. As to formal parts, see R. S. C. Ord. XIX. 4, 7 ; and note (*a*) at p. 217.

464. Special reply (*l*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. and C. D. . . . Plaintiffs,
and
E. F. and G. H. . . . Defendants.

Reply.

1. The plaintiff joins issue upon the defendants' statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say; on the —— day of ——, 187—, the said Messrs. M. N. & Co. were indebted to the plaintiff in about £——, the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about £——, which last-mentioned goods have since been delivered by him to them. And at the time of the order for such last-mentioned goods it was agreed between Messrs. M. N. & Co. and the plaintiff, and the order was received upon the terms, that they should endorse and hand over to him the bill of exchange sued upon, together with various other securities, on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day endorsed and handed over to the plaintiff.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

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465. Reply to defence, set off and counter-claim (*m*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. and C. D. . . . Plaintiffs,
and
E. F. and G. H. . . . Defendants.

Reply.

1. The plaintiff joins issue upon the second, third, and fourth paragraphs of the defendants' statement of defence.

(*l*) See R. S. C. App. (C), form No. 6. As to formal parts, see R. S. C. Ord. XIX. 4, 7; and note (*a*) at p. 217 *ante*. For a statement of the defence, to which this is a reply, see *ante* No. 432. As to special replies, see *Earp* v. *Henderson*, 3 Ch. D. 254; and *Hall* v. *Eve*, 4 Ch. D. 341, and note (*a*) at p. 267.

(*m*) See R. S. C. App. (C), form 10. As to formal parts, see R. S. C. Ord. XIX. 4, 7; and note (*a*) at p. 217 *ante*. For a statement of the defence, set-off, and counter-claim, to which this is a reply, see *ante* No. 441.

2. With respect to the alleged set-off stated in paragraph 6, the plaintiff does not admit the correctness of the amount therein stated. All sums advanced by the defendants for disbursements were paid or allowed to them by the plaintiffs by deducting the amount thereof from the third monthly sum of £1,000 paid (subject to such deduction) to the plaintiffs' agents at Calcutta by the defendant on or about the 12th November, 1874.

3. With respect to the alleged breach of warranty and the alleged damages therefrom, stated in the seventh, eighth, and ninth paragraphs, the plaintiffs say that the steamship was at the date of the charter-party capable of steaming nine knots an hour on a consumption of thirty tons of coal a day. If the steamship did not, during the said charter, steam more than eight knots an hour, and that on a consumption of more than thirty-five tons a day, as alleged (which the plaintiffs do not admit), it was in consequence of the bad and unfit quality of the coals provided by the defendants for the ship's use.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

466.

Reply to defence and counter-claim (*n*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . . Plaintiff,
and
C. D. . . . . Defendant.

Reply.

The plaintiff A. B. admits the agreement stated in the defendant C. D.'s statement of defence, but he refuses to grant to the defendant a lease, saying that such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant has not kept the house in good repair, and the same is now in a dilapidated condition.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

(*n*) See R. S. C. App. (C), form 24. As to formal parts, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217 *ante*. For a statement of the defence and counter-claim, to which this is a reply, see *ante* No. 442.

467.
Reply to defence and counter-claim (*o*).

187—. W. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between R. W. . . . . Plaintiff,
and
O. S. and J. B. . . . Defendants,
(by original action)
And between the said O. S. . . . Plaintiff,
and
The said R. W., and J. B., and J. W. . Defendants,
(by counter-claim).

The Reply of the Plaintiff.

1. The plaintiff joins issue with the defendants upon their several defences, and in reply to the statements alleged by the defendant O. S., by way of counter-claim, the plaintiff says as follows :

1. The plaintiff does not admit the execution of any such indenture as is stated in the said counter-claim to bear date the 24th of March, 1860.
2. The plaintiff does not admit that the indenture of the 12th of May, 1860, is stated correctly in the said counter-claim.
3. When the defendant O. S., in the year 1866, applied to the plaintiff to advance him the sum of £10,000, he offered to the plaintiff as a security the lands which were afterwards comprised in the indenture of the 25th of March, 1867, including the mines and minerals which he now alleges were not to form part of the security, and the plaintiff agreed to lend the said sum upon the security of the said lands, including such mines and minerals. During the negotiation for the said loan a valuation of the property to be included in the mortgage was delivered to the plaintiff on behalf of the said defendant. Such valuation included the mines and minerals ; and the plaintiff consented to make the loan on the faith of such valuation. The plaintiff did not know when he took his security that it did not include any interest in the said mines and minerals ; on the contrary, he believed that the entirety of such mines and minerals was to be included therein.
4. The plaintiff does not admit the contents of the indenture

(*o*) See R. S. C. App. (C), form 14. As to formal parts, see R. S. C. Ord. XIX. 4, 7 ; and note (*a*) at p. 217 *ante*. As to the second title, see R. S. C. Ord. XXII. 5 ; and note (*a*) at p. 257 *ante*. For a statement of the defence and counter-claim, to which this is a reply, see *ante* No. 443.

of the 1st of September, 1866, to be as alleged, or that it was so framed as not to include the said mines and minerals, or that it was not intended to include anything not included in the security of the 12th of May, 1860, or that J. L., in the counter-claim named, only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him.

5. Save so far as the plaintiff's solicitor may have had notice by means of the abstract of title that the mines and minerals under the said lands did not belong to the defendant O. S., the plaintiff had not any notice thereof, and he does not admit that it appeared from the abstract of title that such was the case. The mines were not omitted from any valuation delivered to the plaintiff as stated in the counter-claim.

6. The plaintiff admits that when he took his security he was aware that there was endorsed on the deed by which the said lands were conveyed by J. C. A. in the counter-claim named, a notice of a settlement of 24th March, 1860, but he had no further or other notice thereof, and though his solicitor inquired after such settlement none was ever produced.

7. The plaintiff submits that if it shall appear that no further interest in the said mines and minerals was conveyed to him by his said security than one undivided moiety of a term of 500 years therein, as alleged by the said counter-claim, such interest is effectually included in the plaintiff's said security, and that he is entitled to foreclose the same.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

468.

Reply to counter-claim (*p*).

[*Heading and title as in* No. 467 *ante.*]

The Reply of the above-named J. W.

1. The said J. W. admits the allegations contained in the first and second paragraphs of the counter-claim of the defendant O. S.

2. The said J. W. submits that, under the circumstances set forth in the said counter-claim, the defendant O. S. ought to be ordered to pay his costs of this action.

Delivered the —— day of ——, 187—, by
X. Y., of [*place of business*], agent for
T. Z., of [*place of business*], solicitor for the said J. W.
Or, J. W., of [*address*] in person.

(*p*) As to the formal parts, see R. S. C. Ord. XIX. 4. 7; Ord. XXII. 5; and *ante*, p. 217, note (*a*). For the counter-claim, to which this is a reply, see *ante* No. 443.

Section V.—Pleadings subsequent to Reply (*a*).

469. Summons for leave to deliver a special pleading subsequent to reply (*b*).

Formal parts: see post No. 881.
on the part of the defendant that he may be at liberty to deliver a rejoinder in this action traversing and confessing and avoiding [*or as may be*] the allegations in the plaintiff's reply. And that the costs of this application may be costs in the action.

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470. Summons for further time to deliver rejoinder (*c*).

Formal parts: see post No. 881.
on the part of the defendant —— [*or as may be*], that he may have —— days further time to deliver a rejoinder [*or as may be*] in this action. And that the costs of this application may be costs in the action (*d*).

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471. Summons for leave to deliver rejoinder, notwithstanding that time has expired (*c*).

Formal parts: see post No. 881.
on the part of the defendant [*or as may be*], that, notwithstanding the time limited has expired, he may be at liberty on or before the —— day of ——, 187—, to deliver a rejoinder in this action. And that the costs of this application may be costs in the action (*d*).

(*a*) If the party pleading intends to rely on new facts not appearing in any previous pleading, he must plead them specially; R. S. C. Ord. XIX. 18; but otherwise he may join issue upon the last pleading; *Ibid.*, rule 21. Such joinder of issue will operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party pleading may be willing to admit, and will then operate as a denial of the facts not so admitted; *Ibid.*, rule 21.

(*b*) No pleading subsequent to reply other than a joinder of issue may be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit; R. S. C. Ord. XXIV. 2.

(*c*) Subject to Ord. XXIV. 2 (*supra*, note (*b*) to No. 469), every pleading subsequent to reply must be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge; R. S. C. Ord. XXIV. 3; in the computation of this time the time of the long vacation is not reckoned; R. S. C. Ord. LVII. 5; nor may the pleading be delivered in the long vacation, unless otherwise ordered by the Court or a Judge; *Ibid.*, 4. The time allowed may be enlarged by the Court or a Judge, and such enlargement may be ordered notwithstanding the previous expiration of the time allowed; *Ibid.*, 6.

(*d*) See note (*d*) to No. 402 *ante*.

472.
Joinder of issue (*e*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Joinder of Issue.

The defendant C. D. joins issue upon the plaintiff A. B.'s statement in reply.

Delivered the —— day of ——, 187—, by
T. Z. of [*place of business*], agent for X. Y. of [*place of business*], solicitor for the said C. D.
Or, C. D. of [*address*], defendant in person.

473.
Another form (*f*).

Heading and title: see ante No. 472.

Joinder of Issue.

The defendants join issue upon the plaintiff's reply.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 472 *ante.*]

474.
Another form (*g*).

Heading and title: see ante No. 472.

Joinder of Issue.

The defendant joins issue upon the first and second paragraphs of the reply.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 472 *ante.*]

(*e*) See R. S. C. App. (C), form 24. As to the formal parts, see R. S. C. Ord. XIX. 4, 7, and *ante*, note (*a*) at p. 217.

(*f*) See R. S. C. App. (C), form 9. As to the formal parts, see R. S. C. Ord. XIX. 4, 7, and *ante*, note (*a*) at p. 217.

(*g*) See R. S. C. App. (C), forms 12 and 21. As to the formal parts, see R. S. C. Ord. XIX. 4, 7, and *ante*, note (*a*) at p. 217. The effect of this pleading is that the allegations in the other paragraphs of the reply are admitted; R. S. C. Ord. XIX. 17; Ord. XXIX. 12.

475.
Another form (*h*).

Heading and title: see ante No. 472.

Joinder of Issue.

The defendants join issue upon the plaintiffs' reply to their set-off and counter-claim.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 472 *ante.*]

476.
Special rejoinder (*j*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Rejoinder

1. The defendant admits that the agreement stated in his statement of defence in this action provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant. The defendant also admits that after the making of the said agreement he did not keep the house in repair, but he says that the forfeiture thereby incurred was waived by the plaintiff under the circumstances hereinafter mentioned.

2. The defendant, before the 25th day of March, 1877, restored the house to a good state of repair, and on the said 25th day of March, 1877, the said house was in a good state of repair. The defendant, on the —— day of ——, 187—, before any exercise by the plaintiff of his power of re-entry, paid to the plaintiff and the plaintiff accepted the rent due under the said agreement on the said 25th day of March, 1877. At the time of the payment and acceptance of the said rent the plaintiff had notice and knowledge that the aforesaid breach of the said agreement had been committed.

3. Since the said 25th day of March, 1877, the said house has been kept and the same now is in good repair. The defendant denies the statement in the plaintiff's reply that the house is now in a dilapidated condition.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 472 *ante.*]

(*h*) See R. S. C. App. (C), form 10. As to the formal parts, see R. S. C. Ord. XIX. 4, 7. and *ante*, note (*a*) at p. 217.

(*j*) For the reply to which this form is a rejoinder, see *ante* No. 466. As to the formal parts, see R. S. C. Ord. XIX. 4, 7, and *ante*, note (*a*) at p. 217. Leave must be obtained to deliver the rejoinder; R. S. C. XXIV. 2. For form of application, see *ante* No. 469.

Section VI.—Demurrers (*a*).

(*a*) Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not show any cause of action, or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the Court as against the party demurring; R. S. C. Ord. XXVIII. 1; either party may demur to part of the pleading of the opposite party and put in a defence or other pleading to the other part thereof; *Ibid.*, rule 4; or he may by leave of the Court or a Judge plead as well as demur to the same pleading or the same part of the pleading of the opposite party; *Ibid.*, rule 5. A demurrer should only be put in where there are no facts in dispute, and the whole question arises upon the pleadings; *Leyman* v. *Latimer*, 26 W. R. 305. As to demurrers, see Dan. Pr. 465—501. As to the operation of a demurrer by way of admission of the matters of fact well pleaded in the pleading demurred to, see Dan. Pr. 466—469; *Watson* v. *Hawkins*, 24 W. R. 884; *Metropolitan Ry. Co.* v. *Defries*, 25 W. R. 841; if a party in the same pleading demurs to part of his opponent's pleading, and traverses another part of the same pleading, upon the demurrer, he is taken to admit only the allegations of fact in that part to which he has demurred; *Watson* v. *Hawkins*, *ubi supra*. A demurrer must state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party; it must also state some ground in law for the demurrer, though the party demurring will not, on the argument of the demurrer, be limited to the ground so stated; R. S. C. Ord. XXVIII. 2. A demurrer must be delivered in the same manner as any other pleading in the action; *Ibid.*, rule 3; as to the delivery of pleadings, see R. S. C. Ord. XIX. rules 6, 7, and *ante*, note (*a*) at p. 217. The demurrer may be entered for argument immediately; if it be not so entered, and notice thereof given within ten days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer will be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument; R. S. C. Ord. XXVIII. 6. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, must pay to the demurring defendant the costs of the action, unless the Court shall otherwise order; *Ibid.*, rule 9; if a demurrer to part of a statement of claim be allowed, the part demurred to will, subject to the power of the Court to allow an amendment, be deemed as between the parties to the demurrer to be struck out of the statement of claim, and the rights of the parties will be the same as if it had not been pleaded; *Ibid.*, rule 10; and the plaintiff must, unless the Court otherwise direct, pay to the demurring defendant his costs of the demurrer; *Ibid.*, rule 8. Where the demurrer is allowed upon argument, the order allowing the demurrer will provide for payment of costs; see forms in Pemb. on Judgments and Orders, pp. 50, 51; where the demurrer is held to be sufficient without argument under Ord. XXVIII. 6, *supra*, the order for payment of costs is obtained on motion or petition of course; see *post* Nos. 487, 488. If a demurrer to the statement of claim is overruled, the plaintiff will,

unless the Court otherwise directs, be entitled to his costs of the demurrer; R. S. C. Ord. XXVIII. 11; the Court may give the defendant leave to plead to the matter demurred to; *Ibid.*, rule 12; but if such leave be not given, then if the demurrer were to the whole of the statement of claim, the plaintiff would seem to be in the same position as if the defendant had made default in delivering a defence or demurrer, and may accordingly proceed to obtain judgment by default under R. S. C. Ord. XXIX. rules 2 to 11; see *post* Nos. 523 to 538; but if it be held that a defendant who has put in a demurrer alone, which has been overruled, has not "made default in delivering a defence or demurrer" within Ord. XXIX., then the plaintiff should move for judgment under R. S. C. Ord. XL. 1; see *post* No. 821. If the demurrer be to part only of the statement of claim and the defendant has pleaded to the other part thereof, the cause of action demurred to will be deemed to be admitted; R. S. C. Ord. XIX. 17; and the plaintiff may move under Ord. XL. 11, as upon an admission of fact in the pleadings; see *post* No. 503; or he may, without moving, reply to the defence, and bring the action on for trial in the ordinary way, and on the trial the cause of action demurred to will be deemed to be admitted by the defendant. If a demurrer to the whole or a part of a statement of defence be allowed, the defence, or the part demurred to, will, unless the Court give the defendant leave to amend, be deemed to be struck out, and the rights of the parties will be the same as if it had not been pleaded; R. S. C. Ord. XXVIII. 10; if, therefore, the demurrer be to the whole statement of defence, the plaintiff may proceed to obtain judgment by default as for want of a defence under R. S. C. Ord. XXIX. rules 2 to 11; see *post* Nos. 523—538; but if the demurrer be to part only, he must reply to the other part. In either case the plaintiff will, unless the Court otherwise orders, be entitled to his costs of the demurrer; R. S. C. Ord. XXVIII. 8; if the demurrer be allowed upon argument, the order allowing the demurrer will provide for the costs; see form of order, Pemb. on Judgments and Orders, p. 50; if the demurrer is held to be sufficient without argument under Ord. XXVIII. 6, the order for payment of costs is obtained on motion or petition of course; see *post* Nos. 487, 488. If a demurrer to the statement of defence be overruled, the defendant will, unless the Court otherwise directs, be entitled to his costs of the demurrer; R. S. C. Ord. XXVIII. 11; and the Court may give the plaintiff leave to reply to the defence or the part thereof demurred to; *Ibid.*, rule 12; but if such leave be not given the pleadings will be closed, and the statements of fact in the defence, or the part thereof demurred to, will be deemed to be admitted; R. S. C. Ord. XIX. 17, and Ord. XXIX. 12; and if the plaintiff does not, within six weeks, give notice of trial, the defendant may either give notice of trial, or may move to dismiss the action for want of prosecution; R. S. C. Ord. XXXVI. 4, 4*a* (R. S. C. June, 1876, rule 13). If a demurrer to a counter-claim or a part thereof be allowed, the counter-claim, or the part demurred to, will, unless the Court gives leave to amend, be deemed as between the parties to the demurrer to be struck out, and the rights of such parties will be the same as if it had never been pleaded; R. S. C. Ord. XXVIII. 10; and the demurring party will, unless the Court otherwise orders, be entitled to his costs of the demurrer; R. S. C. Ord. XXVIII. 8; where the person who has successfully demurred to the whole of a counter-claim is not a party to the original action, but has been brought in under R. S. C. Ord. XXII. 6, by being served with an indorsed copy of the counter-claim, he will be entitled to recover from the defendant setting up the counter-claim his whole costs of the action, and not merely those of the demurrer. Where the

demurrer is allowed upon argument, the order allowing the demurrer will provide for the costs; see form of order, Pemb. Judgments and Orders, 50; if the demurrer is held to be sufficient without argument under Ord. XXVIII. 6, the order for payment of costs is obtained on motion or petition of course; see *post* Nos. 487, 488. If a demurrer to a counter-claim be overruled, the defendant will, unless the Court otherwise directs, be entitled to his costs of the demurrer; R. S. C. Ord. XXVIII. 11; and the Court may give the demurring party leave to reply to the counter-claim or the part thereof demurred to; *Ibid.*, rule 12; but if such leave be not given, then, if the demurring party be the plaintiff, the counter-claim, or the part thereof demurred to, will be taken to be admitted; R. S. C. Ord. XIX. 17, and Ord. XXIX. 12; and the defendant's course to obtain judgment on the counter-claim will be, if the plaintiff does not within six weeks after the close of the pleadings give notice of trial, to give such notice of trial himself; R. S. C. Ord. XXXVI. 4; he cannot move under R. S. C. Ord. XL. 11; *Rolfe* v. *Maclaren*, 3 Ch. D. 106. If the demurring party be a person other than the plaintiff and leave to reply be not given, then, if the demurrer were to the whole of the counter-claim, the defendant should move for judgment against such person, either under R. S. C. Ord. XXIX. 13, as for default in delivering a reply, or under R. S. C. Ord. XL. 1; see *post* Nos. 543 and 821; but if the demurrer were to part only of a counter-claim, the allegations of fact in that part will be deemed to be admitted; R. S. C. Ord. XIX. 17; the defendant's course in that case is, if the plaintiff does not within six weeks after the close of the pleadings give notice of trial, to give notice of trial himself; R. S. C. Ord. XXXVI. 4; and upon the trial the part of the counter-claim demurred to will be taken to be admitted; R. S. C. Ord. XIX. 17. If a demurrer to the whole or a part of a statement of reply be allowed, the reply or the part demurred to will, unless the Court give the plaintiff or other party delivering the reply leave to amend, be deemed to be struck out, and the rights of the parties will be the same as if it had not been pleaded; R. S. C. Ord. XXVIII. 10; if, therefore, the reply were delivered by the plaintiff, the allegations of fact in the defence or counter-claim, will, if the demurrer were to the whole reply, be deemed to be admitted; R. S. C. Ord. XXIX. 12; if the demurrer were to part only of the reply, they will be deemed to be admitted so far as they are not denied by the other part of the reply; R. S. C. Ord. XIX. 17; the defendant's course in either case is, if the plaintiff does not give notice of trial within six weeks after the close of the pleadings, to give notice of trial himself, or to move to dismiss the action for want of prosecution; R. S. C. Ord. XXXVI. 4, 4*a* (R. S. C. June, 1876, rule 13). If the reply were delivered by a person other than the plaintiff, and leave to amend be not given, then if the demurrer were to the whole reply, the defendant should move for judgment against such person under R. S. C. Ord. XXIX. 13, as for want of a reply; see *post* Nos. 543, 821; but if the demurrer were to part of the reply only, the allegations of fact in the counter-claim will be taken to be admitted so far as they are not denied by the other part of the reply; R. S. C. Ord. XIX. 17. The defendant's course under such circumstances is, if the plaintiff does not within six weeks after the close of the pleadings give notice of trial, to give notice of trial himself; R. S. C. Ord. XXXVI. 4; and upon the trial the part of the counter-claim demurred to will be taken to be admitted; R. S. C. Ord. XIX. 17. In any case the defendant will, unless the Court otherwise orders, be entitled to the costs of the de-

477.
Summons for further time to deliver demurrer or demurrer and other pleading (*b*).

Formal parts : see post No. 881.
on the part of the plaintiff ; *Or*,
on the part of the defendant —— ; *Or*,
on the part of (the defendant) ——, who has been served with a counter-claim of the defendant ——;

that he may have —— days further time to deliver a demurrer ; [*Or*, to deliver a demurrer and defence ; *Or*, to deliver a demurrer and reply ; *or, as may be*] to the [*here specify the pleading to which*

murrer ; R. S. C. Ord. XXVIII. 8 ; if the demurrer be allowed upon argument, the order allowing the demurrer will provide for the costs ; see form of order, Pemb. on Judgments and Orders, p. 50 ; if the demurrer is held to be sufficient without argument under Ord. XXVIII. 6, the order for payment of costs is obtained on motion or petition of course ; see *post* Nos. 487, 488. If a demurrer to a reply be overruled, the plaintiff or other party delivering the reply will, unless the Court otherwise directs, be entitled to the costs of the demurrer ; R. S. C. Ord. XXVIII. 11 ; and the Court may give the defendant leave to plead to the reply ; *Ibid.*, rule 12 ; but if such leave be not given, the pleadings will be deemed to be closed, and the statements of fact in the reply or the part thereof demurred to will be deemed to be admitted ; R. S. C. Ord. XXIX. 12. In a series of cases at the Rolls, in which demurrers on purely technical grounds have been delivered and allowed, but leave to amend has been given, the costs of the demurrer, in the event of the pleading demurred to being amended pursuant to leave, have been reserved ; *Hodges* v. *Hodges*, 24 W. R. 293 ; *Commissioners of Sewers* v. *Gellatly*, 3 Ch. D. 610 ; *Duckett* v. *Gover*, 6 Ch. D. 82. Where the grounds of demurrer expressed in the demurrer, are disallowed, but the demurrer is allowed upon other grounds brought forward only on the argument of the demurrer, the old practice was that the party demurring should pay the same costs as if the demurrer were overruled ; *i. e.*, the costs occasioned by the demurrer ; Dan. Pr. 515, and notes (*g*) and (*h*).

(*b*) A demurrer must be delivered in the same manner and within the same time as any other pleading in the action ; R. S. C. Ord. XXVIII. 3. As to the time within which a demurrer to a statement of claim must be delivered, see R. S. C. Ord. XXII. 1 ; and *ante*, note (*b*) to No. 425. As to the time within which a demurrrer to a defence, set off, or counter-claim must be delivered by the plaintiff, see R. S. C. Ord. XXIV. 1, and *ante*, note (*b*) to No. 455. As to the time within which a demurrer to a counter-claim must be delivered by a party thereto other than the plaintiff, see R. S. C. Ord. XXII. 1, 8, and *ante*, note (*b*) to No. 455. As to the time within which a demurrer to a reply or subsequent pleading must be delivered, see R. S. C. Ord. XXIV. 3, and *ante*, note (*c*) to No. 470. In the computation of these times the time of the long vacation is not reckoned ; R. S. C. Ord. LVII. 5 ; nor may a demurrer be delivered in the long vacation unless otherwise ordered by the Court or a Judge ; *Ibid.*, rule 4. The time allowed may be enlarged by the Court or a Judge, and such enlargement may be ordered notwithstanding that the application for the same is not made until after the expiration of the time allowed ; *Ibid.*, rule 6. Where a defendant obtained an order enlarging the time within which "to deliver his defence," it was held that he might deliver a demurrer within the extended time ; *Hodges* v. *Hodges*, 2 Ch. D. 112.

it is intended to demur or to demur and plead] in this action; and that the costs of this application may be costs in the action (*c*).

478.

Summons for leave to deliver a demurrer or demurrer and other pleading, notwithstanding time has expired (*b*).

Formal parts: see post No. 881.

on the part of [*as in* No. 477 *ante*], that, notwithstanding the time limited has expired, he may be at liberty on or before the —— day of 187—, to deliver a demurrer [*or as may be; see* No. 477 *ante*] to the [*here specify the pleading to which it is intended to demur or to demur and plead*] in this action; and that the costs of this application may be costs in the action (*c*).

479.

Summons for leave to plead and demur to the same matter (*e*).

Formal parts: see post No. 881.

on the part of [*as in* No. 477 *ante*], that he may be at liberty to plead as well as demur to the statement of claim in this action [*Or*, to so much of the plaintiffs' statement of claim as alleges as a breach of contract the matters mentioned in paragraph 17 thereof; *or as may be*]. And that the costs of this application may be costs in the action.

(*b*) See note (*b*) to No. 477 *ante*.

(*c*) See note (*d*) to No. 402 *ante*.

(*e*) A party may not demur and plead to the same matter without the leave of the Court or a Judge: R. S. C. Ord. XXVIII. 5. A party who desires to demur to a pleading of the opposite party to which he has also a good answer of fact may adopt either of these two courses; (1) he may apply to the Court or a Judge for an order giving him leave to plead as well as demur to the same matter; and the Court or Judge may make an order accordingly, or may reserve leave to the party to plead after the demurrer is overruled; R. S. C. Ord. XXVIII. 5; or (2) such party may demur alone and on the hearing of the demurrer may, in the event of the demurrer being overruled, apply to the Court for leave to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to; R. S. C. Ord. XXVIII. 12; such leave ought in general to be granted; *Bell* v. *Wilkinson*, 26 W. R. 275.

480.
Demurrer to whole of pleading (*f*).

187. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant (*g*).

Demurrer.

The defendant [*Or*, The plaintiff; *Or*, J. W., who has been served with a counter-claim of the defendant] demurs to the plaintiff's statement of claim [*Or*, to the defendant's statement of defence; *Or*, of set-off; *Or*, of counter-claim; *Or*, to the statement of reply of the plaintiff; *Or*, of J. W., who has been served with the defendant's counter-claim] in this action, and says that the same is bad in law on the ground that [*here state a ground of demurrer*], and on other grounds sufficient in law to sustain this demurrer.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406, *or* No. 428, *or* No. 468 *ante*.]

481.
Demurrer to part of pleading (*f*).

[*Heading and title as in* No. 480 *ante*.]

Demurrer.

The defendant [*or as may be; see* No. 480 *ante*] demurs to so much of the plaintiff's statement of claim [*or as may be; see ante* No. 480] in this action as claims —— [*Or*, as alleges as a breach of contract the matters mentioned in paragraph 17 thereof; *or as may be*], and says that the same is bad in law on the ground that [*here state a ground of demurrer*], and on other grounds sufficient in law to sustain this demurrer.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406, *or* No. 428, *or* No. 468 *ante*.]

(*f*) See R. S. C. App. (C), form 28. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and *ante*, note (*a*) at p. 217. A demurrer must state specifically whether it is to the whole or a part, and, if so, to what part, of the pleading of the opposite party, and must also state some ground in law for the demurrer, though the party demurring will not on the argument of the demurrer be limited to the ground so stated; R. S. C. Ord. XXVIII. 2.

(*g*) If a counter-claim has been delivered raising questions between the defendant and the plaintiff along with any other person or persons, a further title must be added; R. S. C. Ord. XXII. 5; see *ante* No. 443.

482.
Demurrer to part of pleading, and pleading to the residue thereof (*h*).

[*Heading and title as in* No. 480 *ante.*]

Demurrer and Statement of Defence (*j*).

1. The defendant [*or as may be; see ante* No. 480] demurs to so much of the plaintiff's statement of claim [*or as may be; see ante* No. 480] in this action as claims —— [*or as the case may be*], and says that the same is bad in law on the ground that [*here state a ground of demurrer*], and on other grounds sufficient in law to sustain this demurrer.

2. And as to so much of the said statement of claim [*or as the case may be*] as is not hereinbefore demurred to, the said defendant [*or as may be*] by way of defence [*or as may be*], says [*here state the case which the party demurring and pleading desires to set up in answer to so much of the previous pleading as is not demurred to.*]

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406, *or* No. 428, *or* No. 468 *ante.*]

483.
Demurrer and pleading to the same matter (*k*).

[*Heading and title as in* No. 480 *ante.*]

Demurrer and Statement of Defence (*l*).

1. The defendant [*or as may be; see ante* No. 480] demurs to the plaintiff's statement of claim [*or as may be; see ante* No. 480,

(*h*) A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, must combine such demurrer and defence in one pleading; and so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party he must combine such demurrer and other pleading; R. S. C. Ord. XXVIII. 4. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217. The demurrer must state specifically what part of the pleading of the opposite party is demurred to, and must also state some ground in law for the demurrer; R. S. C. Ord. XXVIII. 2.

(*j*) Or "Demurrer and Reply;" or, as the case may be.

(*k*) A party cannot demur and plead to the same matter without leave; R. S. C. Ord. XXVIII. 5; for form of application for leave, see *ante* No. 479. For the different courses which may be adopted by a party desiring to demur and plead to the same matter, see note (*e*) to No. 479 *ante*. Though Ord. XXVIII. 4 (*supra*, note (*h*) to No. 482), does not in terms apply to the case where a party demurs and pleads to the same matter, it would seem to follow from that rule that whenever a party demurs and pleads at the same time, such demurrer and pleading should be combined, and should not be delivered separately; see Wilson, p. 217, note to the rule in question. As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7, and note (*a*) at p. 217 *ante*. The demurrer must state specifically whether it is to the whole or to a part only, and if so, to what part of the pleading of the opposite party; and must also state some ground in law for the demurrer; R. S. C. Ord. XXVIII. 2.

(*l*) Or "Demurrer and Reply;" or, as the case may be.

or No. 481, *according as the demurrer is to the whole or to a part only of the pleading of the opposite party*] and says that the same is bad in law on the ground that [*here state a ground of demurrer*], and on other grounds sufficient in law to sustain this demurrer.

2. And by way of defence [*or as may be*] to the said statement of claim [*or as may be*], the said defendant [*or as may be*] says [*here state the case which the party demurring and pleading desires to set up in answer to the previous pleading, including the matter demurred to.*]

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 406, *or* No. 428, *or* No. 468 *ante.*]

484. Notice of motion or summons to set aside demurrer (*m*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff [*or as may be; see ante* No. 480], that the demurrer delivered by the defendant [*or as may be*] to the statement of claim [*or as may be*] in this action may be set aside on the ground that

no ground in law is stated for the said demurrer; *Or*,

the ground in law stated for the said demurrer is frivolous;

And that the defendant [*or as may be*] may be ordered to pay to the plaintiff [*or as may be*] the costs of this application.

485. Memorandum of entry of demurrer for argument (*n*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Enter for argument the demurrer of the defendant [*or as the case may be*] to the statement of claim [*or as the case may be*] in this action.

Dated —— day of ——, 18—.
[*Name and address of solicitor or party entering demurrer for argument; see* No. 92 *ante.*]

(*m*) A demurrer must state some ground in law therefor, and if there is no ground, or only a frivolous ground, of demurrer stated, the Court or a Judge may set aside such demurrer with costs; R. S. C. Ord. XXVIII. 2. The application should be made before entering the demurrer for argument.

(*n*) See R. S. C. App. (C), form 29. A demurrer may immediately upon delivery, be entered for argument by either party; R. S. C. Ord. XXVIII. 6; it is entered for argument by delivering the memorandum to the Registrar; *Ibid.*, rule 13; if a demurrer be not so entered for argument within ten days after its delivery, and the party whose pleading is demurred to does not within that time serve an order for leave to amend, the demurrer will be held sufficient in the same manner as if it had been allowed upon argument; *Ibid.*, rule 6.

486.

Notice of entry of demurrer for argument (*o*).

Formal parts: see ante No. 21.

Take notice that I have this day entered for argument the demurrer of the defendant [*or as may be*] to the statement of claim [*or as may be*] in this action.

487.

Motion paper for costs of demurrer not set down (*p*).

Formal parts: see post No. 1570.

To move on behalf of the defendant [*or as may be; see ante*, No. 480], that the plaintiff [*or as may be*] may be ordered to pay his costs of the demurrer to [*here specify the pleading demurred to*] in this action, delivered by the said defendant [*or as may be*] on the —— day of ——, 187—, such demurrer not having been entered for argument, and no order having been served for leave to amend the said [*here specify the pleading demurred to*].

488.

Petition of course for payment of costs of demurrer not set down (*q*).

Formal parts: see post No. 1576.

The humble petition of the defendant [*or as may be*].

Showeth as follows:

1. On the —— day of ——, 187—, your petitioner delivered a demurrer to [*here specify the pleading demurred to*] in this action.

2. The said demurrer has not been entered for argument, and the plaintiff [*or as may be*] has not served an order for leave to amend his said [*here specify the pleading demurred to*].

Your petitioner therefore humbly prays that the plaintiff [*or as may be*] may be ordered to pay your petitioner his costs of the said demurrer.

And your petitioner will ever pray, &c.

(*o*) The party entering the demurrer for argument must, on the same day, give notice thereof to the opposite party; R. S. C. Ord. XXVIII. 6.

(*p*) If a demurrer be not entered for argument, and notice thereof given within ten days after delivery, and the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer will be held sufficient for the same purposes, and with the same result as to costs, as if it had been allowed on argument; R. S. C. Ord. XXVIII. 6. If a demurrer be allowed upon argument, the party whose pleading is demurred to must, unless the Court otherwise order, pay to the demurring party the costs of the demurrer; *Ibid.*, rule 8. The order for payment of costs where the demurrer is held sufficient under rule 6, *supra*, is an order of course, and may be obtained on motion or on petition at the Rolls; Dan. Pr. 510, and note (*p*); for form of order, see Setor, ed. 3, 1257, No. 11.

(*q*) See note (*p*) to No. 487 *ante*; for form of order, see *Smith* v. *Allison*, M. R. 31 May, 1870, Rolls Lib.

489

Motion paper for costs of action where demurrer to whole of statement of claim not set down (*r*).

Formal parts: see post No. 1570.

To move on behalf of the defendant, that the plaintiff may be ordered to pay his costs of the demurrer to the whole of the statement of claim in this action, delivered by the said defendant on the —— day of ——, 187—, and also the said defendant's costs of this action, such demurrer not having been entered for argument, and no order having been served for leave to amend the said statement of claim.

490.

Petition of course for payment of costs of action where demurrer to whole of statement of claim not set down (*s*).

Formal parts: see post No. 1576.

The humble petition of the defendant.

Showeth as follows:

1. On the —— day of ——, 187—, your petitioner delivered a demurrer to the whole of the statement of claim in this action.

2. The said demurrer has not been entered for argument and the plaintiff has not served an order for leave to amend his said statement of claim.

Your petitioner therefore humbly prays that the plaintiff may be ordered to pay to your petitioner his costs of this action, including the costs of the said demurrer.

And your petitioner will ever pray, &c.

(*r*) If a demurrer be not entered for argument, and notice thereof given within ten days after delivery, and the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer will be held sufficient for the same purposes, and with the same result as to costs, as if it had been allowed on argument; R. S. C. Ord. XXVIII. 6. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, must pay to the demurring defendant the costs of the action unless the Court shall otherwise order; *Ibid.*, rule 9. The order for payment of the costs of the action, where the demurrer is held sufficient under rule 6, *supra*, is an order of course, and may be obtained on motion or on petition at the Rolls; Dan. Pr. 510, and note (*p*); for form of order, see Seton, ed. 3, 1257, No. 11.

(*s*) See note (*r*) to No. 489 *ante*.

Section VII.—Pleading Matters arising pending the Action (*a*).

491. Summons for leave to deliver a further defence (*b*).

Formal parts: see post No. 881.

on the part of the defendant, that

[*If the application is not made until after the expiration of eight days from the time at which the new ground of defence arose, add:*] notwithstanding the expiration of the time limited by the Rules of the Supreme Court, Order XX., rule 2,

he may be at liberty on or before the —— day of ——, 187—, to deliver a further statement of defence in this action setting forth a ground of defence to the plaintiff's claim which has arisen since the delivery of the statement of defence [*Or*, since the expiration of the time limited for delivering a statement of defence] in this action; and that the costs of this application may be costs in the action.

(*a*) Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence; R. S. C. Ord. XX. 1; and if any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, within eight days after such ground of defence has arisen, and by leave of the Court or a Judge, deliver a further defence setting forth the same; *Ibid.*, rule 2. In like manner, if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in his reply, either alone or together with any other ground of reply; R. S. C. Ord. XX. 1; and if any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, and by leave of the Court or a Judge, deliver a further reply setting forth the same; *Ibid.*, rule 2.

(*b*) In order to deliver a further statement of defence, the leave of the Court or a Judge must be obtained; R. S. C. Ord. XX. 2; the application for leave should be made immediately upon the ground of defence, which it is desired to set up, arising, as the further defence itself must be delivered within eight days after the ground of defence has arisen; *Ibid.*; but in computing this time, the time of the long vacation is not reckoned; R. S. C. Ord. LVII. 5; and the Court or a Judge may enlarge the time allowed, and that notwithstanding the application is not made until after the expiration of the time allowed; *Ibid.*, rule 6; see *Re Jones, Eyre* v. *Cox*, 25 W. R. 303. The application for leave to deliver a further statement of defence should be supported by an affidavit; see form, *post* No. 492.

492.
Affidavit in support (*c*).

Formal parts: see post No. 693.

1. The statement of defence in this action was delivered [*Or*, The time limited for delivering a statement of defence in this action expired] on the —— day of ——, 187—.

2. [*State the ground of defence which has arisen after the delivery of the statement of defence, or after the expiration of the time for so doing, and the date on which such ground of defence arose; as thus:*] On the —— day of ——, 187—, by a deed of release bearing date on that day, and made between the plaintiff of the one part and the defendant of the other part, under the hand and seal of the plaintiff, and duly executed and delivered by him, the plaintiff released the defendant from all liability under or by virtue of the contract for the supply of 1,000 tons of coal mentioned in the first paragraph of the statement of claim in this action, and from all actions, claims, and demands by the plaintiff upon, by virtue of or in respect of the said contract.

3. [*If the application is not made until after the expiration of eight days from the time when the new ground of defence arose, here account for the delay in making the application.*]

493.
Summons for further time to deliver further statement of defence (*d*).

Formal parts: see post No. 881.

on the part of the defendant, that he may have —— days further time to deliver his further statement of defence in this action, pursuant to the order dated [*Order for leave to deliver further statement of defence*]; and that the costs of this application may be costs in the action (*e*).

494.
Summons for leave to deliver further statement of defence, notwithstanding time has expired (*d*).

Formal parts: see post No. 881.

on the part of the defendant, that, notwithstanding the time limited has expired, he may be at liberty, on or before the —— day of ——, 187—, to deliver his further statement of defence in this action, pursuant to the order dated [*Order for leave to deliver further statement of defence*]; and that the costs of this application may be costs in the action (*e*).

(*c*) This affidavit should state the new ground of defence, and also the date on which it arose; where the application is not made until after eight days from the time when the new ground of defence arose, it should explain and account for the delay.

(*d*) As to the time within which a further statement of defence should be delivered, and the enlargement of such time, see note (*b*) to No. 491 *ante*.

(*e*) See note (*d*) to No. 402 *ante*.

495

Further statement of defence (*f*)

Formal commencement: see ante No. 406.

Further Statement of Defence.

1. By a deed of release, dated the —— day of ——, 187—, made between the above-named plaintiff A. B. of the one part and the above-named defendant E. F. of the other part, under the hand and seal of the plaintiff and duly executed and delivered by him, the plaintiff released the defendant from all liability under or by virtue of the contract for the supply of 1,000 tons of coal mentioned in the first paragraph of the statement of claim in this action, and from all actions, claims, and demands by the plaintiff upon, by virtue of or in respect of the said contract.

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 428 *ante.*]

496.

Confession of defence arising after commencement of action (*g*).

Formal parts: see ante No. 21.

The plaintiff confesses the defence stated in the —— paragraph of the defendant's statement of defence [*Or*, in the defendant's further statement of defence] in this action.

(*f*) As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7; and note (*a*) at p. 217.

(*g*) Whenever a defendant in his statement of defence, or further statement of defence, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, and may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order; R. S. C. Ord. XX. 3; for form of confession, see R. S. C. App. (B), form No. 2. The effect of such a confession is not that of a mere discontinuance upon which the plaintiff would have to pay and not to receive costs, but which leaves the plaintiff at liberty to commence a fresh action (see R. S. C. Ord. XXIII. 1); it is a final determination of the matters in question in the action, and prevents the plaintiff from bringing any fresh action in respect of such matters; *Newington* v. *Levy*, L. R. 5 C. P. 607; in Cam. Scacc. L. R. 6 C. P. 180. Where the defendant pleaded in bar, and afterwards pleaded the bankruptcy of the plaintiff since action brought, and the plaintiff confessed the plea, it was held that the plaintiff was entitled to judgment for his costs up to the time of pleading bankruptcy; *Foster* v. *Gamgee*, 1 Q. B. D. 666; so, where the defendant was adjudicated a bankrupt, after action brought, upon an act of bankruptcy committed before action brought, and the plaintiff confessed that the property claimed was in the order and disposition of the bankrupt at the date of the act of bankruptcy, it was held that he might sign judgment for his costs; *Champion* v. *Formby*, 7 Ch. D. 373. Matter not showing any defence, but going only to damages, is not a "ground of defence" within R. S. C. Ord. XX. 3; *Callander* v. *Hawkins*, 2 C. P. D. 592.

497. Judgment for costs upon confession (*h*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

—— day of ——, 187— [*Date of entering judgment*].

The defendant in his statement of defence [*Or*, further statement of defence] having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the —— day of ——, 187—, delivered a confession of such defence, and the Taxing Master having taxed the plaintiff's costs of this action at £——, as by the Taxing Master's certificate filed the —— day of ——, 187—, appears; it is this day adjudged that the plaintiff recover against the defendant £——.

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498. Summons for leave to deliver a further reply (*j*).

Formal parts: see post No. 881.

on the part of the plaintiff, that

[*If the application is not made until after the expiration of eight days from the time at which the new ground of reply arose, add:*] notwithstanding the expiration of the time limited by the Rules of the Supreme Court, Order XX., rule 2,

he may be at liberty on or before the —— day of ——, 187—, to deliver a further reply in this action setting forth a ground of defence to the set-off [*Or*, to the counter-claim] set up by the defendant, which has arisen since the delivery of the reply [*Or*,

(*h*) See R. S. C. Ord. XX. 3; and note (*g*) to No. 496 *ante*. As to the effect of the judgment on the plaintiff's right to bring a fresh action, see note (*g*) to No. 496 *ante*. As to the office in which the judgment is entered, the mode of entering judgment, the date of the judgment, and the fee payable on entering the same, see *ante*, note (*b*) to No. 350. On entering the judgment a duplicate of the confession, and the Taxing Master's certificate, must be produced to the officer entering it.

(*j*) See R. S. C. Ord. XX. 2, and note (*a*) at p. 288 *ante*. In order to deliver a further reply, the leave of the Court or a Judge must be obtained; R. S. C. Ord. XX. 2; the application should be made immediately upon the ground of reply, which it is desired to set up, arising, as the further reply itself must be delivered within eight days after the new ground of reply has arisen; *Ibid.*; but in computing this time the time of the long vacation is not reckoned; R. S. C. Ord. LVII. 5; and the time allowed may be enlarged, and that, although the application for enlargement be not made until after the expiration of the time allowed; *Ibid.*, rule 6; see *Re Jones, Eyre* v. *Cox*, 25 W. R. 303. The application for leave to deliver a further reply should be supported by an affidavit; see *post* No. 499.

since the expiration of the time limited for delivering a reply] in this action; and that the costs of this application may be costs in the action.

499. Affidavit in support (*k*).

[*See ante* No. 492.]

500. Summons for further time to deliver further reply (*l*).

Formal parts: see post No. 881.

on the part of the plaintiff, that he may have —— days further time to deliver his further reply in this action, pursuant to the order dated [*Order for leave to deliver further reply*]; and that the costs of this application may be costs in the action (*m*).

501. Summons for leave to deliver further statement of reply, notwithstanding time has expired (*l*).

Formal parts: see post No. 881.

on the part of the plaintiff, that, notwithstanding the time limited has expired, he may be at liberty on or before the —— day of ——, 187—, to deliver his further reply in this action, pursuant to the order dated [*Order for leave to deliver further reply*]; and that the costs of this application may be costs in the action (*m*).

502. Further reply (*n*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . . Plaintiff,
and
C. D. . . . Defendant (*o*).

Further Reply.

1. [*Set forth the ground of defence to the set-off or counter-claim of the defendant which has arisen since the delivery of the reply or since the expiration of the time limited for delivering a reply; see ante* No. 495.]

Delivered the —— day of ——, 187—, by [*Conclude as in* No. 457 *ante*].

(*k*) The affidavit should state the new ground of reply, and the date on which it arose. Where the application for leave to deliver a further reply is not made until after eight days from the time when the new ground of defence arose, it should explain and account for the delay.

(*l*) As to the time within which a further reply should be delivered, and the enlargement of such time, see note (*j*) to No. 498 *ante*.

(*m*) See note (*d*) to No. 402 *ante*.

(*n*) As to the formal parts of a pleading, see R. S. C. Ord. XIX. 4, 7; and note (*a*) at p. 217 *ante*.

(*o*) If the reply is to a counter-claim raising questions between the defendant and the plaintiff along with any other person or persons, there must be a further title; see *ante* No. 443, and R. S. C. Ord. XXII. 5.

Section VIII.—Moving upon an Admission of Facts in the Pleadings (*a*).

(*a*) Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties; such application may be made by motion so soon as the right of the party applying to the relief claimed has appeared from the pleadings; the Court or a Judge may, on such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit; R. S. C. Ord. XL. 11. This rule is permissive, and a plaintiff does not lose his right to rely upon an admission by not applying under it; *Tildesley* v. *Harper*, 7 Ch. D. 403. An application under the rule should be by motion, and not by summons at Chambers; *Austin* v. *Amhurst*, M. R. at Chambers, 15 January, 1878. The motion need not, like a motion for judgment, be set down in the cause book, but may be brought on as an ordinary motion; but if, on the motion being made, it appears that there must be a discussion or argument, it may be ordered to go into the general paper, subject to any order for its being advanced; Registrar's notice of April, 1876. The Court or Judge to whom an application is made under this rule has a discretion as to whether the questions raised can be conveniently disposed of on the motion, and with this discretion the Court of Appeal will not interfere; *Mellor* v. *Sidebottom*, 5 Ch. D. 342; unless in an extreme case; see *Davy* v. *Garrett*, 7 Ch. D. 473. A party cannot move under this rule where the opposite party has made default in delivering a pleading; not putting in a pleading is not an "admission of fact in the pleadings;" *Gillott* v. *Kerr*, 24 W. R. 428. A defendant whose set-off or counter-claim is admitted by the plaintiff, cannot move against the plaintiff under this rule; under R. S. C. Ord. XXII. 10, such set-off or counter-claim can, as against the plaintiff, only be dealt with at the hearing when the plaintiff's claim is dealt with and disposed of; *Rolfe* v. *Maclaren*, 3 Ch. D. 106. A defendant who has put in a statement of defence which, if uncontradicted, is a good answer to the plaintiff's claim, cannot for default of a reply move to dismiss under this rule; he must wait until the plaintiff has made default in giving notice of trial, and must then either give notice of trial himself under R. S. C. Ord. XXXVI. 4, or move to dismiss for want of prosecution under R. S. C. Ord. XXXVI. 4*a* (R. S. C. June, 1876, rule 13); *Litton* v. *Litton*, 3 Ch. D. 793. An application under this rule may be made directly it appears upon the pleadings that something is admitted which entitles the party moving to relief; *Gilbert* v. *Smith*, 2 Ch. D. 686. It is not an answer to the motion that the order asked for would be equivalent to a judgment for the whole of the relief sought by the statement of claim; the rule is to be read as if the words "if any" were inserted after the words "without waiting for the determination of any other question;" *Clutton* v. *Lee*, 24 W. R. 607; *Turquand* v. *Wilson*, 1 Ch. D. 85; *Rumsey* v. *Read*, 1 Ch. D. 643; *Bennett* v. *Moore*, 1 Ch. D. 692; *Jenkins* v. *Davies*, 1 Ch. D. 696; *Gilbert* v. *Smith*, 2 Ch. D. 686; *Thorp* v. *Holdsworth*, 3 Ch. D. 637. Where two defendants joined in a statement of defence which disclosed no defence as to one of them, on an application under this rule an order was made against such defendant equivalent to final judgment; *Jenkins* v. *Davies*, 1 Ch. D. 696. Where the order on the motion is equivalent to a full judgment, and it is necessary to reserve further consideration, the order will be in the ordinary form, with the addition of

503.
Notice of motion under Order XL., rule 11.

Formal parts: see post No. 1571.
on the part of the plaintiff, that [*Here specify the relief claimed, the right to which of the party moving appears upon the pleadings; as thus:*] an account may be taken of the partnership dealings between the plaintiff and the defendant under the articles of partnership, dated the —— day of ——, 187—, stated in the statement of claim in this action; and that the said partnership may be dissolved.

Section IX.—Amending Pleadings (*a*).

these words, "and without requiring any further prior hearing than this motion of the said action, the further hearing of the said action is adjourned;" *Bennett* v. *Moore*, 1 Ch. D. 692; *Gilbert* v. *Smith*, 2 Ch. D. 686.

(*a*) Under certain circumstances a plaintiff may amend his statement of claim, and a defendant may amend any set-off or counter-claim set up by him, without any order for that purpose; in other cases a pleading may not be amended without an order. An order to amend a pleading may be either voluntary, *i. e.*, obtained by the party who pleaded for leave to amend his own pleading; or adverse, *i. e.*, obtained by the opposite party for the purpose of having the pleading or some part of it struck out as improper to have been pleaded. In the following cases an amendment may be made without any order: (1) The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared; R. S. C. Ord. XXVII. 2. The time limited for reply is three weeks after the defence, or the last of the defences, shall have been delivered, unless the time be extended by the Court or a Judge; R. S. C. Ord. XXIV. 1. (2) A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or, in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence; R. S. C. Ord. XXVII. 3. The time allowed for pleading to the reply is four days from the delivery of the reply, unless the time be extended by the Court or a Judge; R. S. C. Ord. XXIV. 3. It will be observed that this rule does not allow a defendant to amend his statement of defence, but only his set-off or counter-claim. Under rule 2 a plaintiff may not amend his statement of claim by withdrawing any of his alleged causes of complaint; for that purpose he should, before reply, give notice in writing withdrawing such causes of complaint; or, after reply, obtain an order of the Court or a Judge striking out such causes of complaint; R. S. C. Ord. XXIII. 1; and, under rule 3, a defendant may not amend his set-off or counter-claim by withdrawing any part thereof; but if he wishes to withdraw any part thereof he should obtain leave from the Court or a Judge to do so; R. S. C. Ord. XXIII. 1. For forms under R. S. C. Ord. XXIII., see *post*, Chap. IX. pp. 316—320. In the computation of the above times the time of the long vacation is not reckoned; R. S. C. Ord. LVII. 5; nor may any pleading be amended in the long vacation unless directed by the Court or a Judge; *Ibid.*, rule 4. Whenever a statement of

claim, set-off, or counter-claim is amended under the above rules, a copy of the amended pleading must be delivered to the opposite party within the time allowed for making the amendment; R. S. C. Ord. XXVII. 10. The cases provided for in R. S. C. Ord. XXVII. rules 2, 3, are the only cases in which a pleading may be amended without an order; and even in those cases, while a demurrer to the whole or any part of the statement of claim, set-off, or counter-claim is pending, it cannot be amended without an order; R. S. C. Ord. XXVIII. 7. Where any party has, under the above rules, amended his pleading without an order, the opposite party may either apply to the Court or a Judge to disallow the amendment; R. S. C. Ord. XXVII. 4; or he may apply for leave to plead further, or to amend his own pleading; R. S. C. Ord. XXVII. 5. Either party may apply to the Court or a Judge for leave to amend any pleading delivered by him; R. S. C. Ord. XXVII. 1, 6; this application may be made at any stage of the proceedings; R. S. C. Ord. XXVII. 1; even at the trial of the action; *Ibid.*, rule 6; see *Caldwell* v. *Pagham Harbour Co.* 2 Ch. D. 221, where after defence put in, the plaintiff was allowed to amend his statement of claim so as to turn the action into an information and action; *Chesterfield* v. *Black*, 25 W. R. 409, where after issue joined the plaintiff was allowed to amend his statement of claim on payment of costs; *Budding* v. *Murdoch*, 1 Ch. D. 42, where at the trial liberty was given to the plaintiff to amend his statement of claim so as to raise an entirely new case, the defendant having liberty to amend his defence, and the costs being reserved; *King* v. *Corke*, 1 Ch. D. 57, where at the trial liberty was given to the plaintiff to amend his statement of claim by charging acts of wilful default by a defendant trustee, the plaintiff paying the costs of the first hearing; *Roe* v. *Davis*, 2 Ch. D. 729, where at the trial liberty was given to the plaintiff to amend generally, and the costs were reserved. No affidavit in support of the application for leave to amend, verifying the materiality of the proposed amendments, is now necessary; *Cargill* v. *Bower*, 4 Ch. D. 78; *Chesterfield* v. *Black*, 25 W. R. 409. The Court or Judge to whom the application is made has a discretion whether he will allow an amendment or not; and where the Court or Judge has exercised this discretion the Court of Appeal will not interfere; *Golding* v. *Wharton Salt Works Co.* 1 Q. B. D. 374; *Watson* v. *Rodwell*, 3 Ch. D. 380; unless in an extreme case; *Davy* v. *Garrett*, 7 Ch. D. 473. Although the power of the Court to allow an amendment is unlimited, yet, in general, an amendment will not be allowed for the purpose of depriving the plaintiff of a substantial admission; *Tildesley* v. *Harper*, 7 Ch. D. 403; nor will an amendment be allowed for the mere purpose of enabling the defendant to raise a purely technical objection to the plaintiff's title to sue, which the defendant never intended by his pleadings to raise; *Collette* v. *Goode*, 7 Ch. D. 842. Where an amendment is allowed the Court may impose such terms as to costs or otherwise as may seem just; R. S. C. Ord. XXVII. 6; and where, at the time of the application for leave to amend any pleading, a demurrer to the whole or any part of that pleading is pending, the order may not be made except on payment of the costs of the demurrer; R. S. C. Ord. XXVIII. 7. Where a party has obtained a voluntary order for leave to amend a pleading delivered by him, the amendment must be made, and the amended pleading must be delivered to the opposite party within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, otherwise the order to amend will, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge; R. S. C.

Ord. XXVII. rules 7 and 10. In every case where a voluntary amendment of a pleading is made, whether with or without an order, the amendment may be made by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in the pleading delivered would render such pleading difficult or inconvenient to read; in either of which cases the amendment must be made by delivering a fresh copy of the pleading as amended; R. S. C. Ord. XXVII. 8; in such a case, if the amended pleading contains less than ten folios of seventy-two words each, it may be either written or printed, or partly written and partly printed, but if it contains ten folios or more it must be printed; R. S. C. Ord. XIX. 5; and R. S. C. June, 1876, rule 9. The pleading, when amended, must be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended day of , 187 , by order dated day of , 187 ;" R. S. C. Ord. XXVII. 9. An order for the amendment of a pleading may also be made adversely to the party by whom the pleading was delivered; for either party may, at any stage of the proceedings, apply to the Court or a Judge for an order to strike out or amend any matter in any pleading delivered by the opposite party which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; R. S. C. Ord. XXVII. 1, 6; such application may be made even at the trial of the action; *Ibid.*, rule 6. The Court or Judge to whom the application is made has a discretion as to making the order, and where this discretion has been exercised the Court of Appeal will not interfere; *Golding* v. *Wharton Salt Works Co.*, 1 Q. B. D. 374; *Watson* v. *Rodwell*, 3 Ch. D. 380; except in an extreme case; *Davy* v. *Garrett*, 7 Ch. D. 473. As to what matter is scandalous, see Dan. Pr. 290—292; irrelevant and scandalous matter will be ordered to be struck out, but not relevant matter though scandalous; Dan. Pr. 290; *Blake* v. *Albion Life Assurance Co.*, 24 W. R. 677. By "embarrassing" matter is meant matter which the party pleading it is not entitled to make use of; *Heugh* v. *Chamberlain*, 25 W. R. 742; and see *Spurr* v. *Hall*, 2 Q. B. D. 615; *Berdan* v. *Greenwood*, W. N. (1878), 104. In *Cashin* v. *Craddock*, 3 Ch. D. 376, the whole statement of claim was struck out, part being unintelligible, part scandalous, and part irrelevant; in *Preston* v. *Lamont*, 1 Ex. D. 361, the whole statement of defence was struck out, as raising no question but the propriety of an order for service out of the jurisdiction; and in *Davy* v. *Garrett*, 7 Ch. D. 473, the whole statement of claim was struck out as being prolix, as pleading matters of evidence, and as pleading facts having no connection with the defendant or with the relief claimed. Either party may also at any stage of the proceedings, and even at the trial of the action, apply to the Court or a Judge to make any amendments which may be necessary for the purpose of determining the real question or questions in controversy between the parties; R. S. C. Ord. XXVII. 1, 6; and the Court or Judge may either order amendments to be made accordingly, or, if it appears that the pleadings do not sufficiently define the issues of fact in dispute between parties, the Court or Judge may direct the parties to prepare issues, and such issues will, if the parties differ, be settled by the Judge; R. S. C. Ord. XXVI. Besides these cases, it may become necessary to amend the pleadings in other cases also; thus, where a defendant is added, under R. S. C. Ord. XVI. 13, after a statement of claim has been delivered, such statement of claim must, unless otherwise ordered by the Court or a Judge, be amended; R. S. C. Ord. XVI. 16;

504.
Motion paper to amend clerical errors in pleading (*b*).

Formal parts: see post No. 1570.

To move on behalf of the —— for leave to amend his statement of —— in this action by [*Here state the correction which it is desired to make, as:*] substituting the name "Smythe" for the name "Smith" throughout the said statement of ——.

505.
Petition of course for the like (*b*).

Formal parts: see post No. 1576.

The humble petition of the ——.

Showeth as follows:

1. On the —— day of ——, 187—, your petitioner delivered his statement of —— in this action.

2. Your petitioner has since discovered clerical errors in the said statement of ——.

Your petitioner therefore humbly prays that he may be at liberty to amend his said statement of ——, by [*Continue as in* No. 504 *ante, to end*].

And your petitioner will ever pray, &c.

506.
Summons for leave to amend a pleading (*c*).

Formal parts: see post No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to amend his statement of claim [*or as may be*] in this

ante, p. 5, note (*a*); and in all cases where an alteration in the parties to an action is made by an order, an amendment of the title of the pleadings already delivered will be necessary; see *ante* form No. 1; where, after statement of claim delivered, an order is made under R. S. C. Ord. XVII. 8, 9, excluding certain of the causes of action joined by the plaintiff, an amendment of the statement of claim will be necessary; see *post* No. 520, and note (*z*); where, under R. S. C. Ord. XIX. 3, and Ord. XXII. 9, an order is made excluding a counter-claim or any part thereof, an amendment of the statement of defence will be necessary; see *ante* No. 452, and note (*s*); where a party, served under R. S. C. Ord. XVI. 18, appears, and obtains leave from the Court or a Judge to defend the action, it will be necessary to amend any pleadings that have already been delivered; R. S. C. Ord. XVI. 21; *supra*, p. 167, note (*a*), and No. 345 and note (*m*); and where, under R. S. C. Ord. XXIII. 1, a plaintiff gives notice to discontinue his action as to any of the causes of action included therein, or obtains the leave of the Court or a Judge to withdraw any of such causes of action, or a defendant obtains the leave of the Court or a Judge to withdraw any ground of defence, set-off, or counter-claim set up by him, an amendment of the pleadings will be involved; see *post* Nos. 545, 548, 555.

(*b*) An order for leave to amend a pleading by the correction of merely clerical errors therein in names, dates, or sums, may be obtained at any time upon motion or petition without notice. The motion paper or petition, and also the order, should specify the errors which are to be corrected. See Dan. Pr. 336; for form of order, see Seton, ed. 3,1251, No. 1.

(*c*) As to the cases in which an amendment may be made without an order, see R. S. C. Ord. XXVII. 2, 3; R. S. C. Ord. XXVIII. 7; and *supra*, note (*a*) at page 294. Where the party is not entitled to amend without an order, an

action by [*Here specify the amendments which it is desired to make*]

[*If the application is to amend the statement of claim, and notice of motion for an injunction or a receiver is pending* (*d*), *add:*] without prejudice to the notice of motion for an injunction [*Or*, for a receiver] in this action;

[*If the application is to amend the statement of claim and an injunction has been obtained* (*e*), *add:*] without prejudice to the injunction awarded in this action;

[*If the application is to amend the statement of claim and notice of trial has been given* (*f*), *add:*] without prejudice to the notice of trial in this action;

[*Conclude*] And that the costs of this application may be costs in the action.

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507. Motion paper for leave to amend a pleading by consent (*g*).

Formal parts: see post No. 1570.

To move on behalf of all parties, that the plaintiff [*or as may be*] may be at liberty to amend his statement of claim [*or as may be*] in this action as he may be advised [*Or*, by (*here specify the amendments to be made*)]. [*Conclude as in* No. 506 *ante.*]

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508. Petition of course for leave to amend a pleading by consent (*j*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. On the —— day of ——, 187—, your petitioner delivered his statement of —— in this action (*k*).

application for leave to amend must be made to the Court or a Judge; R. S. C. Ord. XXVII. 6; the application should be made by summons, and not by motion; see *Marriott* v. *Marriott*, 26 W. R. 416; or, by consent, the order for liberty to amend may be obtained on motion or petition of course; and an order for leave to amend merely clerical errors in a pleading may, at any time, and without consent, be obtained on motion or petition of course; see note (*b*) to No. 504 *ante*. No affidavit in support of the application verifying the materiality of the proposed amendments is necessary; *Cargill* v. *Bower*, 4 Ch. D. 78; *Chesterfield* v. *Black*, 25 W. R. 409; *supra*, note (*a*) at page 295.

(*d*) Where notice of motion for an injunction or for a receiver is pending, the order should be drawn up in this form, otherwise the amendment of the statement of claim will operate as a waiver of such notice; Dan. Pr. 1523.

(*e*) Where the statement of claim is amended after an injunction has been awarded, it is usual, though not indispensable, for the amendment to be made without prejudice to the injunction; Dan. Pr. 349, 350, and notes (*f*) and (*g*); *Harvey* v. *Hall*, L. R. 11 Eq. 31.

(*f*) See *Earl de la Warr* v. *Cavendish*, V.-C. W. 22 Dec. 1865, Reg. Lib. A. 2421.

(*g*) See note (*c*) to No. 506 *ante*. The order can only be obtained as of course by consent.

(*j*) See note (*c*) to No. 506 *ante*. The order can only be obtained on petition of course by consent. For form of consent, see *post* No. 1577.

(*k*) If the application is by the plaintiff to amend his statement of claim,

2. Your petitioner is now desirous, with the consent of the defendant [*or as may be*] to amend his said statement of ——.

Your petitioner therefore humbly prays that, by consent of the defendant [*or as may be*], he may be at liberty to amend his statement of claim [*or as may be*] in this action, as he may be advised [*Or*, by [*(here specify the amendments to be made)*]. [*Conclude as in* No. 506 *ante.*]

And your petitioner will ever pray, &c.

510.
Summons to enlarge time to amend (*m*).

Formal parts: see post No. 881.

on the part of the ——, that he may have —— days further time to amend his statement of —— in this action, pursuant to the order dated the —— day of ——, 187—; and that the costs of this application may be costs in this action (*n*).

511.
Summons for leave to amend, notwithstanding time has expired (*m*).

Formal parts: see post No. 881.

on the part of the ——, that, notwithstanding the expiration of the time limited, he may be at liberty on or before the —— day of ——, 187—, to amend his statement of —— in this action, pursuant to the order dated the —— day of ——, 187—; and that the costs of this application may be costs in the action (*n*).

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or by a defendant to amend his set-off or counter-claim, the proceedings in the action should be recited so as to show that the petitioner is not able to amend without an order.

(*m*) If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or, if no time is thereby limited, then within fourteen days from the date of the order, the order will, on the expiration of the time limited, or of the fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge; R. S. C. Ord. XXVII. 7; and see note (*a*) at pp. 295, 296. In the computation of this time the time of the long vacation is not reckoned; R. S. C. Ord. LVII. 5; nor may any pleading be amended in the long vacation unless directed by the Court or a Judge; *Ibid.*, rule 4. The time may be enlarged by the Court or a Judge; R. S. C. Ord. XXVII. 7; Ord. LVII. 6; and such enlargement may apparently be ordered although the time has previously expired; R. S. C. Ord. LVII. 6; notwithstanding the provision that upon the expiration of the time allowed the order shall become *ipso facto* void; R. S. C. Ord. XXVII. 7; compare *Re Jones, Eyre* v. *Cox*, 25 W. R. 303, where the time for renewing a writ of summons was enlarged after the writ had, under R. S. C. Ord. VIII. 1, ceased to be in force by reason of lapse of time.

(*n*) See note (*d*) to No. 402 *post.*

512.
Summons to disallow amendments made without an order (*o*).

Formal parts: see post No. 881.

on the part of the defendant [*Or*, of the plaintiff; *Or*, of (the defendant) A. B., who has been served with a counter-claim of the defendant C. D. in this action], that

[*If it is desired to have all the amendments made disallowed, say:*] the amendments made by the plaintiff [*Or*, by the defendant] in his statement of claim [*Or*, in his set-off; *Or*, in his counterclaim] in this action

[*If it is desired to have part of the amendments disallowed; say:*] the amendments made by the plaintiff [*Or*, by the defendant] in the third, seventh, eighth, and ninth paragraphs of his statement of claim [*Or*, of his set-off; *Or*, of his counter-claim] in this action, and also the paragraphs numbered 14a, 22, and 23, introduced into the said statement of claim [*Or*, the said set-off; *Or*, the said counter-claim]

under the Rules of the Supreme Court, Order XXVII., rule 2 [*Or*, rule 3] may be disallowed, and that the same may be struck out accordingly, and that the said statement of claim [*Or*, the said set-off; *Or*, the said counter-claim] may be restored to the state in which it was before such amendments were made; and that the plaintiff [*Or*, the defendant] may be ordered to pay the costs of this application.

513.
Summons to disallow amendments made under an order (*p*).

Formal parts: see post No. 881.

on the part of the defendant [*or as may be; see ante* No. 512], that

[*If it is desired to have all the amendments disallowed, say:*]

(*o*) Where the plaintiff has without an order amended his statement of claim under R. S. C. Ord. XXVII. 2, or the defendant has without an order amended a set-off or counter-claim set up by him under rule 3 of the same order, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just; R. S. C. Ord. XXVII. 4. Where the plaintiff has, under rule 2, amended his statement of claim by withdrawing any of the causes of action included therein, or the defendant has under rule 3 amended his set-off or counter-claim by withdrawing any ground of set-off or counter-claim, such amendments are irregular; see R. S. C. Ord. XXIII. 1; and the opposite party may either apply to have the amendment disallowed and the pleading restored to its original state under rule 4, *supra*; or he may waive the irregularity and apply for the payment of any costs that he may have incurred in respect of the matter so withdrawn; see Dan. Pr. 351, 352, and notes (*r*), (*s*), and (*t*); and *post* Nos. 516, 517, 518, and note (*t*).

(*p*) If the amendments introduced into a pleading under an order are not warranted by the order to amend, or are improper, the opposite party may move on notice that the amendments be struck out, and the pleading restored to its original state; Dan. Pr. 351, and note (*q*). Where an order to amend

the amendments made by the plaintiff [*or as may be*] in his statement of claim [*or as may be*] in this action

[*If it is desired to have part of the amendments disallowed, say:*] the amendments made by the plaintiff [*or as may be*] in the —— paragraphs of his statement of claim [*or as may be*] in this action, and also the paragraphs numbered ——, introduced into the said statement of ——

since the order dated the —— day of ——, 187— (*q*), may be disallowed, and that the same may be struck out accordingly, and that the said statement of claim [*or as may be*] may be restored to the state in which it was before such amendments were made; and that the plaintiff [*or as may be*] may be ordered to pay the costs of this application.

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514. Summons for leave to amend pleading where opposite party has amended his pleading (*s*).

[*Same as* No. 506 *ante.*]

515. Summons for leave to plead further where opposite party has amended his pleading (*s*).

Formal parts; see post No. 881.

on the part of the defendant [*or as may be; see ante* No. 512], that he may be at liberty on or before the —— day of ——, 187—, to deliver a further statement of defence [*Or*, of reply] to the statement of claim of the plaintiff [*Or*, to the set-off; *Or*, the

as the party may be advised has been obtained, it would seem to be irregular to amend by striking out any cause of action or any ground of defence, set-off, or counter-claim; R. S. C. Ord. XXIII. 1; and where such an amendment is made under such an order, the opposite party may either apply to have the amendment disallowed, and the pleading restored to its original state, or he may waive the irregularity and apply for the payment of any costs that he may have incurred in respect of the matter so withdrawn; see Dan. Pr. 351, 352, and notes (*r*), (*s*), and (*t*), and *post* Nos. 516, 517, 518, and note (*t*).

(*q*) Order to amend.

(*s*) Where a party amends his pleading after the opposite party has delivered a subsequent pleading, the latter party is entitled to choose whether he will obtain leave to amend his subsequent pleading, or to put in a further pleading, or whether he will stand upon his original pleading; *Boddy* v. *Wall*, 7 Ch. D. 164; not following *Darling* v. *Lawrence*, W. N. (1877) 182. If the party adopts the latter course, the amendments will be taken to be admitted upon the pleadings; *ibid.* If the party desires to amend his subsequent pleading or to plead further, he must obtain the leave of the Court or a Judge so to do; R. S. C. Ord. XXVII. 1, 5, 6. The application for such leave should be made by summons; see *Marriott* v. *Marriott*, 26 W. R. 416; but the necessity for such an application will be obviated if, when an application for leave to amend a pleading is made, the opposite party, on the hearing of such application, obtains leave to make such amendments in any pleading already delivered by him, or to deliver such further pleading as the amendments to be made under the order by his adversary may render expedient.

counter-claim of the defendant ——] in this action, which has been amended by the plaintiff [*Or*, the defendant] under the Rules of the Supreme Court, Order XXVII., rule 2 [*Or*, rule 3].

Or, under order dated the —— day of ——, 187—.

516.
Notice of motion or summons for payment of costs of matter abandoned by amendment (*t*).

Formal parts : see post No. 1571 *or* 881.

on the part of the defendant, that the plaintiff may be ordered to pay to the said defendant his costs of this action up to the time of the amendment of the statement of claim in this action ; and also the costs of this application.

517.
The like (*t*).

Formal parts : see post No. 1571 *or* 881.

on the part of the plaintiff [*Or*, of (the defendant) J. W., who has been served with a counter-claim of the defendant A. B. in this action] that the said defendant A. B. may be ordered to pay to the plaintiff [*Or*, to the said (defendant) J. W.] his costs of the set-off [*Or*, of the counter-claim] set up by the said defendant in this action up to the time of the amendment of the said set-off [*Or*, of the said counter-claim] ; and also the costs of this application.

518.
The like (*t*).

Formal parts : see post No. 1571 *or* 881.

on the part of the defendant [*or as may be ; see ante* No. 512], that the plaintiff [*or as may be*] may be ordered to pay to the said defendant [*or as may be*] so much of the costs of the said defendant [*or as may be*] of this action as have been occasioned by

the claim for ——, made by the statement of claim [*Or*, by the set-off ; *Or*, by the counter-claim of the defendant A. B.] in this action ; *Or*,

the defence of ——, set up by the statement of defence [*Or*, of reply] in this action ; *Or*,

the allegations contained in the —— paragraphs of the statement of claim [*or as may be*] in this action ;

and also the costs of this application.

(*t*) Where a plaintiff amends his statement of claim, or a defendant amends a set-off or counter-claim set up by him, so as to make an entirely new case, the defendant in the former case, or, in the latter case, the plaintiff or any person who has been served with the counter-claim, may apply to be put in the same position as if the plaintiff, instead of amending had discontinued his action, and commenced a new one, or as if the defendant, instead of amending, had withdrawn his set-off or counter-claim, and delivered a new one ; Dan. Pr. 351, and note (*q*). Upon the same principle where the party amending his pleading strikes out any cause of action or ground of defence, set-off, counter-claim, or reply, or any allegations in his pleading, and the opposite party has incurred any costs in respect of the matter so struck out, he may apply to have such costs taxed and paid to him ; Dan. Pr. 351, 352, and notes (*r*), (*s*), and (*t*) ; and see R. S. C. Ord. XXIII. 1.

519. Summons to strike out scandalous or embarrassing matter (*u*).

Formal parts: see post No. 881.
on the part of the plaintiff [*or as may be; see ante*, No. 512] that
the statement of claim [*Or*, of defence; *or as may be*] in this action (*v*); *Or*,
the paragraphs numbered —— in the statement of claim [*or as may be*] in this action; *Or*,
the passage commencing with the words " " in the —— line and ending with the words " " in the —— line of the —— paragraph of the statement of claim [*or as may be*] in this action;
may be struck out as
scandalous and irrelevant (*w*); *Or*,
tending to prejudice and embarrass the plaintiff (*x*); *Or*,
tending to delay the fair trial of this action; *or as may be*;
and that the defendant [*or as may be*] may be ordered to pay the costs of this application.

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520. Notice of motion or summons to exclude certain causes of action, and to confine action to rest of plaintiff's claim (*z*).

Formal parts: see post No. 1571 *or* 881.
on the part of the defendant C. D., that the plaintiff's claim in this action for [*here specify the causes of action which it desired to exclude*] may be excluded, and that this action may be confined to the rest of the causes of action mentioned in the statement of claim in this action
[*If no statement of claim has been delivered, say:*] mentioned in the indorsement of claim on the writ of summons in this action
And that the plaintiff may be ordered to amend the said statement of claim [*Or*, the said indorsement of claim] accordingly; and that the plaintiff may be ordered to pay the costs of this application and of making the said amendment.

(*u*) See R. S. C. Ord. XXVII. 1, 6; and *supra*, note (*a*) at p. 296. The application should be made by summons, and not by motion; and, if made by motion, the costs given will not exceed those of a summons attended by counsel; *Marriott* v. *Marriott*, 26 W. R. 416.

(*v*) See *Cashin* v. *Craddock*, 3 Ch. D. 376; *Preston* v. *Lamont*, 1 Exch. D. 361; *Davy* v. *Garrett*, 7 Ch. D. 473; *ante* p. 296.

(*w*) See Dan. Pr. 290—292; *Blake* v. *Albion Life Assurance Co.*, 24 W. R. 677; *ante* p. 296.

(*x*) See *Heugh* v. *Chamberlain*, 25 W. R. 742; *ante* p. 296.

(*z*) If the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, the defendant may apply to the Court or a Judge for an order excluding any of such causes of action, and confining the action to such of the causes of action as may be conveniently disposed of in one proceeding; R. S. C. Ord. XVII. 8, 9. Any objection on the ground of multifariousness must be taken in the manner pointed out by these rules, and not by demurrer; *Cox* v. *Barker*, 3 Ch. D. 359.

CHAPTER VIII.

PROCEEDINGS IN DEFAULT OF PLEADING.

SECTION I.—DEFENDANT'S PROCEEDINGS IN DEFAULT OF DELIVERY OF A STATEMENT OF CLAIM (*a*).

521. Notice of motion or summons to dismiss action for want of prosecution (*b*).

Formal parts: see post No. 1571 *or* 881.

on the part of the defendant [*Or*, of the defendant A. B.], that this action may stand dismissed

(*a*) If the plaintiff being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just; R. S. C. Ord. XXIX. 1. A plaintiff is bound to deliver a statement of claim in every case where the defendant appears and does not state that he does not require the delivery of a statement of claim; R. S. C. Ord. XXI. 1 (*a*). As to the time allowed for the delivery of a statement of claim, see R. S. C. Ord. XXI. 1 (*a*), and *ante* No. 402, note (*c*). If, after notice of the application is served, but before the application is heard, the plaintiff delivers a statement of claim, this will be a good answer to the application; Dan. Pr. 706, and note (*x*), 707, and note (*g*); but in such a case the defendant will be entitled to his costs of the application, and may bring the application on for the purpose of obtaining such costs; Dan. Pr. 706, 707, and notes (*y*), (*h*), and (*j*); the plaintiff should, therefore, on delivering the statement of claim after notice of an application to dismiss has been given, tender to the defendant his costs of the application actually incurred up to the time of such delivery, and if he does so, the defendant will not be allowed subsequent costs; Dan. Pr. 708, and note (*k*). On the hearing of the application, the Court usually grants it with costs, or gives the plaintiff a short further time to deliver his statement, making him pay costs; Dan. Pr. 710; *Higginbottom* v. *Aynsley*, 3 Ch. D. 288; see *Freason* v. *Lowe*, 26 W. R. 138. The effect of an order dismissing the action unless the plaintiff delivers a statement of claim within a limited time, is that, at the expiration of the time limited, unless the statement has been delivered, the action is at an end; and an order made after the expiration of the time limited, giving further time to deliver the statement, is *ultra vires*; *Whistler* v. *Hancock*, 3 Q. B. D. 83.

(*b*) An application to dismiss for want of prosecution should generally be made at Chambers; *Freason* v. *Lowe*, 26 W. R. 138. It should be supported

[*If there are other defendants than the applicant, add:*] as against the said defendant A. B. (*c*),

for want of prosecution; with costs to be paid by the plaintiff to the said defendant.

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522. Affidavit in support.

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, an appearance was duly entered with the Clerk of Records and Writs [*Or*, with the Registrar of the District Registry at ——] in this action for the defendant A. B.

2. [*If notice of the appearance was necessary* (*d*), *say:*] On the —— day of ——, 187—, I gave notice of the said appearance to the above-named plaintiff [*Or*, to Mr. ——, the solicitor in this action for the above-named plaintiff] by [*Here describe the mode of service; see post* No. 741. *As to when the notice may be served through the post, see R. S. C. Ord. XII.*, 6 (*R. S. C. Feb.* 1876, *r.* 5); *note* (*e*) *to* No. 295 *ante; and for form of affidavit of service of a notice through the post-office, see ante* No. 30].

3. The said defendant A. B. has not stated that he does not require the delivery of a statement of claim in this action.

4. No statement of claim has yet been delivered in this action.

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by the certificate of the Record and Writ Clerk, or of the district registrar, of appearance entered by the moving defendant, and also by an affidavit that a statement of claim has neither been dispensed with nor delivered; see Pemb. Judgments and Orders, p. 54, No. 1, and *post* No. 522.

(*c*) A defendant can only have the action dismissed as against himself, not as against other defendants; *Ward* v. *Ward*, 11 Beav. 159; 12 Jur. 592.

(*d*) For the cases in which notice of the appearance must be given, see R. S. C. Ord. XII. 6, 15, 20, and R. S. C. Feb. 1876, rule 5, and *ante* No. 295, note (*e*).

Section II.—Plaintiff's Proceedings in Default of Delivery of a Defence or Demurrer (*e*).

(1.) *In an action for a debt or liquidated demand* (*f*).

523. Judgment for default of defence in action for debt or liquidated demand (*g*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and E. F. . Defendants.

—— day of ——, 187— [*date of entering judgment*].

The defendants [*Or*, The defendant C. D.] not having delivered any statement of defence, it is this day adjudged that the plaintiff recover against the said defendants [*Or*, against the said defendant C. D.] £——, and costs to be taxed.

(*e*) Where no statement of claim is required or delivered, no statement of defence can be required, nor any judgment entered under R. S. C. Ord. XXIX.; *Hooper v. Giles*, W. N. (1876), 10; it would appear that "in such a case, pleadings are dispensed with by mutual consent, the indorsement on the writ alone identifying the controversy to be decided;" Wilson, note to R. S. C. Ord. XXII. 2, p. 208.

(*f*) If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs; R. S. C. Ord. XXIX. 2; and if in such an action there are several defendants, and one of them make default in delivering a defence or demurrer, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment, without prejudice to his right to proceed with his action against the other defendants; *Ibid.*, rule 3. As to the time allowed for the delivery of a defence or demurrer, see R. S. C. Ord. XXII. rules 1, 2, 3; R. S. C. Ord. XXVIII. 3, and *ante* No. 425, note (*b*).

(*g*) See R. S. C. App. (D), form No. 1. As to the mode of entering a judgment by default, see *ante* No. 350, note (*b*). On entering the judgment, a copy of the statement of claim, and (in London) the Record and Writ Clerk's certificate of appearance must be produced to the officer by whom the judgment is entered; Seton, ed. 4, p. 13. The judgment will be dated as of the day when such documents are left with the proper officer; R. S. C. Ord. XLI. 3. As to the fee on entering the judgment, see *ante* No. 350, note (*b*).

(2.) *In an action for the detention of goods and pecuniary damages, or either of them* (*h*).

524.

Judgment for default of defence for the recovery of damages (*j*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge.*]

Between A. B. . . . Plaintiff,

and

C. D. and E. F. . Defendants.

—— day of ——, 187— [*date of entering judgment*].

The defendants [*Or*, The defendant C. D.] not having delivered any statement of defence, it is this day adjudged that the plaintiff recover against the defendants [*Or*, against the said defendant C. D.] damages in respect of the matters mentioned in the statement of claim in this action, such damages to be assessed.

525.

Judgment for default of defence for the value of goods, and damages for their detention (*j*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge.*]

Between A. B. . . . Plaintiff,

and

C. D. and E. F. . Defendants.

—— day of ——, 187— [*date of entering judgment*].

The defendants [*Or*, The defendant C. D.] not having delivered any statement of defence, it is this day adjudged that the plaintiff recover against the defendants [*Or*, against the said defendant C. D.] the value of the chattels mentioned in the statement of claim in this action,

[*If damages for the detention of the goods are claimed, add :*] and also damages for the detention of the said chattels,

such value and damages to be assessed.

(*h*) If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default in delivering a defence or demurrer, the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry may be issued to assess the value of the goods and the damages, or the damages only, as the case may be; but the Court or a Judge may order that, instead of a writ of inquiry, the value of the goods and amount of damages, or either of them, be ascertained in any way in which any question arising in an action may be tried; R. S. C. Ord. XXIX. 4; if in such an action there are several defendants, and one of them make default as above mentioned, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others; and in such case, damages against the defendant making default will be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct; *Ibid.*, rule 5.

(*j*) As to the mode of entering a judgment by default, see *ante* No. 350, note (*b*). On entering the judgment, a copy of the statement of claim and (in London) the Record and Writ Clerk's certificate of appearance or non-appearance (as the case may be), must be produced to the officer by whom judgment is entered, and the judgment will be dated as of the day when such

526.
Motion paper for leave to enter judgment for the recovery of specific chattels (*k*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff, that he may be at liberty to enter judgment for default of defence for the recovery of the chattels mentioned in the statement of claim in this action [*If damages for their detention are claimed, add :*] and for damages for the detention thereof.

527.
Summons for like purpose (*k*).

Formal parts : see post No. 881.

on the part of the plaintiff, that he may be at liberty [*Continue as in last form to end*].

528.
Final judgment for recovery of specific chattels, and interlocutory judgment for damages for their detention (*l*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and E. F. . Defendants.

—— day of ——, 187— [*date of entering judgment*].

The defendants not having delivered any statement of defence, it is this day adjudged that the plaintiff recover against the defendants the following chattels, that is to say [*here enumerate the chattels, as in the statement of claim*],

[*If damages are claimed for the detention of the goods, add :*] and also damages for the detention thereof, such damages to be assessed,

and costs to be taxed (*m*).

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documents are left with him ; R. S. C. Ord. XLI. 3. As to the fee payable on entering the judgment, see *ante* No. 350, note (*b*).

(*k*) It is doubtful whether judgment for the return of specific chattels may or may not be entered without an order ; *Ivory* v. *Cruickshank*, W. N. (1875), 249.

(*l*) This judgment can only be entered where the sole defendant or all the defendants make default in delivering a defence or demurrer ; where some only make default, the plaintiff should proceed under R. S. C. Ord. XXIX. 11, and set down the action on motion for judgment against the defaulting defendant, at the time when it is entered for trial or set down on motion for judgment against the other defendants ; see *post* note (*y*) at p. 313. As to the mode of entering the judgment in the text, see *ante* No. 350, note (*b*). On entering the judgment a copy of the statement of claim, and (in London) the Record and Writ Clerk's certificate of appearance must be produced to the officer by whom the judgment is entered, and the judgment will be dated as of the day when such documents are left with him ; R. S. C. Ord. XLI. 3. As to the fee payable on entering the judgment, see *ante* No. 350, note (*b*).

(*m*) The judgment for costs should be inserted only in case the judgment is a final one, *i.e.*, for the recovery of the specific chattels only.

529. Proceedings to assess damages under interlocutory judgment against sole defendant, or against all defendants (*n*).

[*Same as* Nos. 358 *to* 375 *ante.*]

530. Final judgment for default of defence against sole defendant, or against all defendants (*o*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,

and

—— and —— . Defendants.

—— day of ——, 187— [*date of entering final judgment*].

The defendants not having delivered any statement of defence, and [*continue as in* No. 376 *or* No. 377 *ante*].

531. Notice of motion to set aside inquisition, and to vacate judgment, and for new writ of inquiry (*p*).

[*Same as* No. 378 *ante.*]

(*n*) Where a sole defendant or all the defendants make default, the ordinary course for the purpose of assessing the value of the goods and the damages, or the damages only (as the case may be), is to issue a writ of inquiry; but the Court or a Judge may order that, instead of a writ of inquiry, the value and damages, or either, shall be ascertained in any way in which any question arising in an action may be tried; R. S. C. Ord. XXIX. 4. As to the modes in which questions arising in an action may be tried, see R. S. C. Ord. XXXVI. 2, and *ante* No. 358, and note (*r*) thereto. Where one or some only of the defendants make default, the damages will, unless the Court or Judge otherwise directs, be assessed against the defaulting defendants at the same time with the trial of the action or the issues therein against the other defendants; R. S. C. Ord. XXXVI. 2.

(*o*) This form is applicable only where a sole defendant or all the defendants make default; where some only of the defendants make default, judgment will be entered against them and against the other defendants at the same time; see R. S. C. Ord. XXIX. 5. As to the mode in which judgment is entered, see *ante* No. 350, and note (*b*); on entering the final judgment, the interlocutory judgment, the order (if any) as to the mode of assessing the damages, and the sheriff's return and inquisition, or the associate's certificate, or other document showing the amount at which damages have been assessed, must be produced to the officer by whom judgment is entered, and the judgment will be dated as of the day when the documents are so left; R. S. C. Ord. XLI. 3. As to the fee payable on entering the judgment, see note (*w*) to No. 376 *ante*.

(*p*) See note (*y*) to No. 378 *ante*.

(3.) *In an action for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only* (*q*).

532. Final judgment for debt, and interlocutory judgment for damages (*r*).

187—. . No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between —— . . . Plaintiff,
and
—— and —— . Defendants.

—— day of ——, 187— [*date of entering judgment*].

The defendants not having delivered any statement of defence, it is this day adjudged that the plaintiff do recover against the defendants £——, and it is also adjudged that the plaintiff recover against the defendants damages in respect of the matters mentioned in the statement of claim in this action [*Or*, the value of the goods mentioned in the statement of claim in this action, and also damages for the detention thereof], such damages [*Or*, such value and damages] to be assessed.

533. Subsequent proceedings down to entry of final judgment (*s*).

[*Same as* Nos. 529 *to* 531 *ante*.]

(*q*) If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default in delivering a defence or demurrer, the plaintiff may enter final judgment for the debt or liquidated demand, and also interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed to ascertain the value and damages, or damages, in the manner pointed out in R. S. C. Ord. XXIX. 4, and note (*n*) to No. 529 *ante*; R. S. C. Ord. XXIX. 6. This rule applies only where the sole defendant or all the defendants make default as mentioned, and not where some only of the defendants make such default; this latter case falls within Ord. XXIX. rule 11, and the plaintiff, in order to obtain judgment against the defaulting defendant or defendants, must set down the action on motion for judgment against such defendants; this he may do either immediately upon default being made, or at the time when the action is entered for trial, or set down on motion for judgment against the other defendants; R. S. C. Ord. XXIX. 11.

(*r*) This form is applicable only where a sole defendant or all the defendants make default; see note (*q*) *supra*. As to the mode of entering judgment, see *ante* No. 350, and note (*b*). On entering the judgment a copy of the statement of claim, and (in London) the Record and Writ Clerk's certificate of appearance or non-appearance (as the case may be), must be produced to the officer entering the judgment, which will be dated as of the day on which such documents are left with the officer; R. S. C. Ord. XLI. 3. As to the fee payable on entering the judgment, see *ante* No. 350, and note (*b*).

(*s*) See notes to Nos. 529, 530, 531 *ante*.

(4.) *In an action for the recovery of land* (*t*).

534. Final judgment for default of defence for recovery of land (*u*).

187—. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between —— . . . Plaintiff,
and
—— and —— . Defendants.

—— day of ——, 187— [*date of entering judgment*].

No statement of defence having been delivered in this action, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim mentioned, and costs to be taxed.

(*t*) In an action for the recovery of land, if the defendant makes default in delivering a defence or demurrer, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs; R. S. C. Ord. XXIX. 7. This rule applies only to the case where a sole defendant or all the defendants make default in delivering a defence or demurrer; where some only of the defendants make default, the plaintiff should set down the action on motion for judgment against the defaulting defendants at the time when he enters it for trial, or sets it down on motion for judgment against the other defendants; R. S. C. Ord. XXIX. 11.

(*u*) This form may be used only where all defendants make default; see note (*t*) *supra*. As to the mode of entering judgment, see *ante* No. 350, note (*b*). On entering judgment, the statement of claim and (in London) the Record and Writ Clerk's certificate of appearance must be produced, and the judgment will be dated as of the day when such documents are so produced; R. S. C. Ord. XLI. 3. As to the fee on entering the judgment, see *ante* No. 350, note (*b*). As to the effect, by way of estoppel, of judgment in an action for the recovery of land, see *Harris* v. *Mulkern*, 1 Exch. D. 31.

(5.) *In an action for the recovery of land, and also for mesne profits, arrears of rent, or damages for breach of contract* (*v*).

535. Final judgment for recovery of land, and for liquidated sum for arrears of rent (*w*).

In the High Court of Justice, Chancery Division. 187—. No. .

[*Name of Judge.*]

Between —— . . . Plaintiff,

and

—— and —— . Defendants.

—— day of ——, 187— [*date of entering judgment*].

No statement of defence having been delivered in this action, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim mentioned; and it is also adjudged that the plaintiff recover against the defendants £——, and costs to be taxed.

536. Final judgment for recovery of land, and interlocutory judgment for mesne profits or damages (*w*).

In the High Court of Justice, Chancery Division. 187—. No. .

[*Name of Judge.*]

Between —— . . . Plaintiff,

and

—— and —— . Defendants.

—— day of ——, 187— [*date of entry of judgment*].

No statement of defence having been delivered in this action, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim mentioned, and also damages in respect of the matters mentioned in the said statement of claim, such damages to be assessed.

(*v*) Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, if the defendant makes default in delivering a defence or demurrer, or, if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in R. S. C. Ord. XXIX. rules 4 and 5; R. S. C. Ord. XXIX. 8. The direction in this rule that the plaintiff may after judgment proceed as mentioned in rules 4 and 5, applies only to those cases where the plaintiff's claim is for mesne profits or damages for breach of contract, *i.e.*, for an unliquidated demand, and not where it is for a liquidated sum for arrears of rent, in which case the judgment will be final in the first instance. Where some only of the defendants make default, the plaintiff may, under the above rule, enter final or interlocutory judgment (as the case may be) against the defaulting defendants in respect of his claim for mesne profits, arrears of rent or damages for breach of contract (see *ante* Nos. 523, 524), but he cannot enter judgment against them for the recovery of the land; in respect of that claim he must set the action down on motion for judgment against the defaulting defendants, at the same time that he enters it for trial or sets it down on motion for judgment against the other defendants; see note (*t*) at p. 311.

(*w*) This form may be used only where all the defendants make default;

[*Same as* Nos. 529 *to* 531 *ante.*]

537. Subsequent proceedings down to entry of final judgment for damages (*x*).

(6.) *In any other action* (*y*).

[*Same as* No. 821 *post.*]

538. Motion for judgment (*z*).

SECTION III.—DEFENDANT'S PROCEEDINGS TO SET ASIDE A JUDGMENT ENTERED FOR WANT OF A DEFENCE (*a*).

539. Notice of motion or summons to set aside judgment regularly entered for default of a defence (*b*).

Formal parts : see post No. 1571 or 881.

on the part of the defendant, that the judgment entered in this action on the —— day of ——, 187— [*If there have been any subsequent proceedings upon such judgment, state them, as :* and the writ of —— issued on such judgment on the —— day of ——, 187—], may be set aside, and that the defendant may be at liberty on or before the —— day of ——, 187—,

[*If no appearance has been entered, say :*] to enter an appearance and

to deliver a statement of defence in this action.

see note (*v*) *supra.* As to the mode of entering judgment, see *ante* No. 350, note (*b*). On entering judgment, the statement of claim and (in London) the Record and Writ Clerk's certificate of appearance must be produced, and the judgment will be dated as of the day when such documents are so produced ; R. S. C. Ord. XLI. 3. As to the fee on entering the judgment, see *ante* No. 350, note (*b*).

(*x*) See notes to Nos. 529, 530, 531 *ante.*

(*y*) In all other actions than those above mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such judgment will be given as upon the statement of claim, the Court may consider the plaintiff to be entitled to ; R. S. C. Ord. XXIX. 10 ; and if in such an action there are several defendants, one of whom makes such default, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants ; *Ibid.*, rule 11.

(*z*) As to motion for judgment and the proceedings thereon, see *post* No. 821 ; for forms of judgment upon motion for judgment, under R. S. C. Ord. XXIX. 10, 11, see *post* Nos. 846, 847, 848.

(*a*) Any judgment by default may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit ; R. S. C. Ord. XXIX. 14 ; see *Watt* v. *Barnett*, 3 Q. B. D. 183.

(*b*) See note (*b*) to No. 386 *ante.*

540.
Affidavit in support (*b*).

Formal parts: see post No. 693.

1. [*If no appearance has been entered, state the date of the issuing and service of the writ of summons; and in any case state the date of the filing or delivery of the statement of claim, the date of entering the judgment by default, the subsequent proceedings (if any) which have been taken in the action and their date. See paragraph* 1 *of* No. 387 *ante.*]

2. [*Explain the circumstances under which judgment was allowed to go by default, and account for the delay (if any) in making the application. See paragraph* 2 *of* No. 387 *ante.*]

3. The plaintiff's claim in this action is for [*Here state shortly the nature of the plaintiff's claim, and the facts upon which the applicant relies as affording a good defence thereto*].

4. I am advised and verily believe that I have a good defence to this action upon the merits.

5. [*Show means of knowledge.*]

541.
Notice of motion or summons to set aside judgment, and subsequent proceedings for irregularity (*c*).

Formal parts: see post No. 1571 *or* 881.

on the part of the defendant, that the judgment entered in this action on the —— day of ——, 187— [*If there have been any subsequent proceedings upon such judgment, state them, as:* and the writ of —— issued on such judgment on the —— day of ——, 187—], may be set aside as irregular, on the ground that [*here specify the irregularity*]; and that the defendant may be at liberty, on or before the —— day of ——, 187—,

[*If no appearance has been entered, say:*] to enter an appearance and

to deliver a statement of defence in this action; and that the plaintiff may be ordered to pay to the defendant his costs of this application.

542.
Affidavit in support (*d*).

[*Same as* No. 389 *ante.*]

(*b*) See note (*b*) to No. 386 *ante.*
(*c*) See note (*d*) to No. 388 *ante.*
(*d*) See notes to No. 389 *ante.*

SECTION IV.—PROCEEDINGS WHERE EITHER PARTY MAKES DEFAULT IN DELIVERING A PLEADING SUBSEQUENT TO DEFENCE (*e*).

SECTION V.—PROCEEDINGS WHERE ISSUES ARISE OTHER THAN BETWEEN PLAINTIFF AND DEFENDANT, AND ANY PARTY TO SUCH ISSUE MAKES DEFAULT IN DELIVERING A PLEADING (*f*).

[*Same as* No. 821 *post.*]

543. Motion for judgment (*g*).

(*e*) If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading or a demurrer, within the period allowed for that purpose, the pleadings will be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered will be deemed to be admitted; R. S. C. Ord. XXIX. 12. The next step after the pleadings are closed, is, in general, to give notice of trial; if the plaintiff does not give notice of trial within six weeks after the close of the pleadings, the defendant may do so, or the defendant may move to dismiss the action for want of prosecution; R. S. C. Ord. XXXVI. 4, 4*a*; R. S. C. June, 1876, rule 13. For form of notice of trial, see *post* No. 740.

(*f*) In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to; and the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties; R. S. C. Ord. XXIX. 13. Issues may arise in an action other than between plaintiff and defendant, where a person who has been served with a notice under R. S. C. Ord. XVI. 17, 18, appears in the action pursuant to the notice; R. S. C. Ord. XVI. 21; and where a defendant serves a counter-claim upon a person other than the plaintiff, under R. S. C. Ord. XXII. 5.

(*g*) As to motion for judgment and the proceedings thereon, see *post* No. 821.

CHAPTER IX.

DISCONTINUANCE AND WITHDRAWAL OF CLAIM OR DEFENCE.

544.

Notice of discontinuance (*a*).

Formal parts: see ante No. 21.

Take notice that the plaintiff hereby wholly discontinues this action [*If as against less than all the defendants, add:*] as against the defendant C. D.

545.

Notice of withdrawal of part of claim (*a*).

Formal parts: see ante No. 21.

Take notice that the plaintiff hereby withdraws his claim for —— [*Or,* so much of his claim as relates to ——]

[*If as against less than all the defendants, add:*] as against the defendant C. D.

546.

Judgment for costs on discontinuance, or withdrawal of part of claim (*b*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

—— day of ——, 187— [*date of entering judgment*].

The plaintiff having by a notice in writing dated the —— day

(*a*) The plaintiff may, at any time before receipt of the defendant's statement of defence, or, after the receipt thereof, before taking any other proceeding in the action (save any interlocutory application), by notice in writing wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he must pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn; but such discontinuance or withdrawal, as the case may be, will not be a defence to any subsequent action; R. S. C. Ord. XXIII. 1.

(*b*) The defendant may sign judgment for the costs of an action if it be

of ——, 187—, wholly discontinued this action [*Or*, withdrawn his claim for —— ; *Or*, withdrawn so much of his claim as relates to ——], and the Taxing Master having taxed the defendant's costs of this action [*Or*, the defendant's costs occasioned by the matter so withdrawn] at £——, as by the Taxing Master's certificate filed the —— day of ——, 187—, appears. It is this day adjudged that the said defendant recover against the plaintiff £——.

547.

Notice of motion or summons for order that action be discontinued (*c*).

Formal parts : see post No. 1571 *or* No. 881.
on the part of the plaintiff, that this action may be ordered to be wholly discontinued
[*If as against less than all the defendants, add :*] as against the defendant C. D.,
with costs to be paid by the plaintiff.

548.

Notice of motion or summons to strike out part of claim (*c*).

Formal parts : see post No. 1571 *or* No. 881.
on the part of the plaintiff, that his claim for —— [*Or*, so much of his claim as relates to ——] may be struck out,
[*If as against less than all the defendants, add :*] as against the defendant C. D.,
with costs to be paid by the plaintiff.

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wholly discontinued, or for the costs occasioned by the matter withdrawn if the action be not wholly discontinued ; R. S. C. Ord. XXIII. 3 ; R. S. C. June, 1876, rule 10. As to the office in which the judgment is entered, the mode of entering judgment, the date of the judgment, and the fee payable on entering the same, see *ante* note (*b*) to No. 350. On entering the judgment the notice of discontinuance or withdrawal, and the Taxing Master's certificate must be produced to the officer entering it.

(*c*) Save as mentioned above in note (*a*) to No. 544, it is not competent for the plaintiff to discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out ; R. S. C. Ord. XXIII. 1. The application should be by motion or summons, unless the defendant consents to the application, in which case the order may be obtained on petition of course.

549.
Petition of course to discontinue action, or to strike out part of claim (*d*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff.

Showeth as follows:

1. On the —— day of ——, 187—, your petitioner issued the writ of summons in this action out of the Chancery Division of this honourable Court.

2. On the —— day of ——, 187—, the defendant delivered a statement of defence in this action, and on the —— day of ——, 187—, your petitioner delivered his reply thereto.

3. Your petitioner is now advised to discontinue this action [*Or*, to withdraw his claim for —— ; *Or*, to withdraw so much of his claim as relates to ——].

[*If as against less than all the defendants, add:*] as against the defendant C. D.

Your petitioner therefore humbly prays that with the consent (*e*) of the defendant [*Continue as in* No. 547, *or* No. 548 *ante, to end*].

And your petitioner will ever pray, &c.

550.
Motion paper to discontinue action on special terms by consent (*f*).

Formal parts: see post No. 1570.

To move on behalf of all parties, that by consent this action may be discontinued without costs [*Or*, on the terms within mentioned; *or as may be*].

551.
Petition of course for the like (*g*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. [*State the proceedings in the action, as in paragraphs* 1 *and* 2 *of* No. 549 *ante.*]

(*d*) See note (*c*) to No. 547 *ante*.

(*e*) For form of consent, see *post* No. 1577.

(*f*) By consent an order to discontinue the action on certain terms agreed on, may be obtained on motion of course, or on petition of course, or on special motion or petition, or on summons; Dan. Pr. 696. Where any of the parties are not *sui juris*, or are executors or trustees, or a fund in Court is dealt with, or the terms are complicated, the application should be by special petition; *ibid.*

(*g*) See note (*f*) to No. 550 *ante*. For form of consent to petition, see *post* No. 1577.

2. Your petitioner has now agreed with the defendants [*or as may be*] that this action shall be discontinued upon the terms following, namely: [*State the terms, as thus:*] that each party shall pay his own costs of this action.

Your petitioner therefore humbly prays that by consent this action may be discontinued on the terms aforesaid.

And your petitioner will ever pray, &c.

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552. Notice of motion or summons for the like (*h*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that by consent this action may be discontinued on the terms following, namely: [*State the terms*]; and that all proper directions may be given for carrying the said terms into effect.

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553. Special petition for the like (*j*).

Formal parts: see post No. 1578.

1. [*State the proceedings in the action, the terms agreed upon, and any facts and circumstances material in the particular case; see ante* No. 551.]

Your petitioner therefore humbly prays that this action may be discontinued upon the terms agreed upon as aforesaid, and that all proper directions may be given for carrying the said terms into effect. Or, that [*Conclude as in* No. 1578 *post, and add foot note* No. 1579.]

(*h*) See note (*f*) to No. 550 *ante*.

(*j*) See note (*f*) to No. 550 *ante*.

555.

Notice of motion or summons to strike out defence or counter-claim, or part thereof (*k*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the defendant C. D., that his statement of defence [*Or*, his counter-claim; *Or*, his statement of defence and counter-claim] delivered in this action

Or, so much of his statement of defence delivered in this action as sets up ——

Or, so much of his counter-claim delivered in this action as claims ——

may be struck out.

(*k*) It is not competent to a defendant to withdraw his defence or any part thereof without the leave of the Court or a Judge; but the Court or a Judge may before, or at, or after the hearing or the trial upon such terms as to costs or otherwise as may seem fit, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out; R. S. C. Ord. XXIII. 1.

CHAPTER X.

APPLICATION FOR ORDER FOR INQUIRIES AND ACCOUNTS (*a*).

556. Notice of motion or summons for inquiries or accounts (*a*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*] that the following inquiries and accounts [*or as may be*] may be directed to be made and taken; that is to say [*Set out the inquiries and accounts in numbered paragraphs, as thus:*]

1. An inquiry whether, &c.

2. An account of, &c.

[*If it is desired that the inquiries and accounts should be made and taken before a referee* (*b*), *add:*] And that such inquiries and accounts may be directed to be made and taken before the Official Referee in rotation [*or as may be; see post* No. 1908].

[*If it is desired that the inquiries and accounts should be made and taken in a district registry* (*c*), *add:*] And that such inquiries and accounts may be directed to be made and taken in the office of or by the Registrar of the district registry at [*state where*].

(*a*) The Court or a Judge may at any stage of the proceedings in a cause or matter direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner; R. S. C. Ord. XXXIII.; see *Turquand* v. *Wilson*, 1 Ch. D. 85. The inquiries and accounts will generally be made and taken by the Judge's chief clerk; 15 & 16 Vict. c. 80, s. 29; Cons. Ord. XXXV. 33, 46; see *post* Chap. XVI.; but they may be ordered to be made and taken before a district registrar; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66; or before an official or special referee; 36 & 37 Vict. c. 66, s. 57; see *post* Nos. 1908, 1909.

(*b*) See the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57; and *post* Nos. 1908, 1909, and notes thereto.

(*c*) See the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66; *Irlam* v. *Irlam*, 2 Ch. D. 608; *Re Smith, Hutchinson* v. *Ward*, 6 Ch. D. 692; *McDonald* v. *Foster*, 6 Ch. D. 193.

CHAPTER XI.

EVIDENCE (*a*).

SECTION I.—ADMISSIONS (*b*).

557.
Notice admitting facts stated or referred to in pleading of opposite party (*c*).

Formal parts: see ante No. 21.

Take notice that the defendant C. D. [*or as may be*] hereby admits the truth of the case stated in the plaintiff's statement of claim [*or as may be*] in this action, with respect to [*here specify distinctly and concisely the matter admitted, as thus:*] the circumstances under which the deed dated the —— day of ——, 187–, mentioned in the —— paragraph of the said statement of claim [*or as may be*] was executed.

558.
Another form (*c*).

Formal parts: see ante No. 21.

Take notice that the defendant C. D. [*or as may be*] hereby admits the truth of the following facts stated or referred to in the plaintiff's statement of claim [*or as may be*] in this action; that is to say:

1.
2.
3.

[*Specify distinctly and concisely the facts admitted.*]

(*a*) See Dan. Pr. 738, *et seq.* The rules of evidence are not affected by the Judicature Acts or the rules of court thereunder; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 20.

(*b*) See Dan. Pr. 738—747.

(*c*) Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party; R. S. C. Ord. XXXII. 1. It is conceived that such an admission will, in general, be made in the pleadings, but it may be made otherwise. By the R. S. C. Ord. XIX. 17, every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, will be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition; see *Jenkins* v. *Davies*, 1 Ch. D. 696; *Thorp* v. *Holdsworth*, 3 Ch. D. 637; *Byrd* v. *Nunn*, 5 Ch. D. 781; 7 Ch. D. 284; *Tildesley* v. *Harper*, 7 Ch. D. 403; *Collette* v. *Goode*, 7 Ch. D. 842; *Harris* v. *Gamble*, 7 Ch. D. 877. As to admissions in pleadings, see further, Dan. Pr. 738 to 746.

559.
Admissions by agreement (*d*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Admissions on the part of the plaintiff and defendant.

It is hereby agreed, on behalf of the plaintiff and defendant respectively, to make the following admissions; and that these admissions, and the documents mentioned or referred to therein, may be used and read in evidence upon the trial of this action and for all the purposes thereof: save and except all just causes of exception to the admissibility of the same as evidence; that is to say:—

1. That the several deeds specified in the first schedule hereto, and identified by our respective initials thereon, are the deeds of the like respective dates mentioned in the pleadings of this action; and that the said deeds were respectively executed as they respectively purport to have been.

2. That the several letters specified in the first part of the second schedule hereto, and identified by our respective initials thereon, were respectively duly signed as they purport to have been, and were received in due course by the respective persons to whom such letters respectively purport to be addressed, with the enclosures in such letters referred to, from the persons by whom such letters respectively purport to have been written.

3. That the paper writing marked A., identified by our respective signatures at the foot thereof, contains true copies of the several letters specified in the second part of the second schedule hereto; and that the originals of such letters respectively were duly signed as they purport to have been, and were received in due course [*Continue as paragraph* 2, *to the end*].

4. That the copies of letters contained in the said paper writing marked A., or any of them, may be read in evidence as primary and the best evidence, and not as secondary evidence, and shall have the same force as if they were the originals of such letters; and that the said original letters shall not be required to be produced, or any evidence required as to the same, or of the proper custody thereof, or as to the non-production thereof.

5. That A. B., in the statement of claim in this action named, died on the —— of ——, 186—, intestate, and without having been married.

6. That the defendant C. D. is the eldest son and heir-at-law of E. F., in the said statement of claim named.

(*d*) See Dan. Pr. 746, 747. All written admissions of evidence whereon any order is founded, must be filed at the Report Office; Cons. Ord. I. 44; Cons. Ord. XXIII. 23.

7. That the defendant C. D. is the heir of the said E. F., according to the custom of the manor of W.

We also undertake to produce, for the purposes aforesaid, or any of them, on the trial of this action, and otherwise, as occasion may require, such of the documents specified in the schedules hereto as are in our possession respectively. Dated this —— day of ——, 187—.

T. B., plaintiff's solicitor [*Or*, agent].
J. F., defendant's solicitor [*Or*, agent].

THE FIRST SCHEDULE ABOVE REFERRED TO.

Deeds.

Serial Number.	Dates.	Description.	Parties.
1	1854. January 1	Lease . . .	A. B. one part, and C. D. other part.
2	1861. December 31	Conveyance .	E. F. first part, G. H. second part, and J. L. third part.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Letters.

Serial Number.	Dates.	By whom written.	To whom sent.
		First part.	
3	1863. April 1 .	Defendant . . .	Plaintiff.
4	,, May 10 .	J. F., defendant's solicitor . .	T. B., plaintiff's solicitor.
		Second part.	
5	1863. April 12 .	L. M.	N. O.
6	,, May 18 .	P. R.	S. T.

560.

Another form of admissions, by agreement (*e*).

Formal parts, as in No. 559 *ante.*

We, the undersigned solicitors for the plaintiff and defendants respectively, hereby agree to admit upon the trial of this action and for all the other purposes of this action, that such of the documents mentioned in the schedule hereto as are therein specified to be originals, were respectively written, signed, or executed, as they purport respectively to have been; that such of the said documents as are therein specified as copies are true copies; and that

(*e*) See note (*d*) to No. 559 *ante.*

such of the said documents as are therein stated to have been served, sent, or delivered, were so served, sent, or delivered respectively: saving all just exceptions to the admissibility of all such documents as evidence in this action.

[*Dated and signed, as in* No. 559 *ante.*]

The schedule above referred to.

Originals. } [*Describe the documents: see*
Copies. } No. 561 *post.*]

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561. Notice to admit documents (*f*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge.*]

Between A. B. . . . Plaintiff,

and

C. D. . . . Defendant.

Take notice that the plaintiff [*Or,* defendant; *Or,* petitioner; *Or,* respondent] in this action [*Or,* matter] proposes to adduce in evidence in this action [*Or,* matter], the several documents hereunder specified, and that the same may be inspected by the defendant [*Or,* plaintiff; *Or,* respondent; *Or,* petitioner] his solicitor or agent at [*State where; as thus:*] our office, situate No. 18, New Square, Lincoln's Inn, Middlesex, on [*State when; as thus:*] Monday, the 3rd of March, 187—, between the hours of [*State what: as thus:*] eleven o'clock in the forenoon, and four o'clock in the afternoon. And the defendant [*Or,* plaintiff; *Or,* respondent; *Or,* petitioner] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively: saving all just exceptions to the admissibility of all such documents as evidence in this action [*Or,* matter].

Dated this —— day of ——, 187—.

G. H., solicitor [*Or,* agent] for the plaintiff [*Or,* defendant; *Or,* petitioner; *Or,* respondent].

To Mr. E. F., solicitor [*Or,* agent] for the defendant [*Or,* plaintiff; *Or,* respondent; *Or,* petitioner]

[*Here describe the documents: the manner of doing which may be as follows:*]

(*f*) Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document will be payable by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document will be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense; R. S. C. Ord. XXXII. 2. For form of notice, see R. S. C. Ord. XXXII. 3, and App. (B), No. 12.

ORIGINALS.

Serial Number.	Description of the Documents.	Dates.
1	Deed of Covenant between A. B. & C. D., one part, and E. F., other part	1st January, 1848.
2	Indenture of Lease from A. B. to C. D.	1st February, 1848.
3	Indenture of Release between A. B. & C. D., 1st part, &c. . . .	2nd February, 1848.
4	Letter from defendant to plaintiff .	1st March, 1848.
5	Policy of Insurance on goods by ship *Isabella* on voyage from Oporto to London . . .	3rd December, 1847.
6	Bill of Exchange for £100 at 3 months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H.	1st May, 1840.

COPIES.

Serial Number.	Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
7	Register of baptism of A. B., in the parish of X. . . .	1st January, 1848 .	
8	Letter from plaintiff to defendant . .	1st February, 1848 .	Sent by General Post, 2nd February, 1848.
9	Notice to produce papers .	1st March, 1848 . .	Served 2nd March, 1848, on defendant's solicitor by E. F., of—.
10	Letters Patent of King Charles Second, in the Rolls Chapel .	1st January, 1680 .	

562. Summons to extend time for making admission (*g*).

Formal parts: see post No. 881.

on the part of the defendant [*or as may be*], that the time limited by the notice to admit documents served in this action by the plaintiff [*or as may be*] on the —— day of ——, 187—, for the applicant to inspect and admit the documents specified in the said notice may be (further) enlarged to the day of ——, 187—; and that the costs of this application may be costs in the action (*h*).

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563. Admission (*j*).

I hereby make the admission required to be made by the within notice

[*If some only of the documents are admitted, qualify the admission; as thus:*] so far as relates to the documents distinguished therein by the numbers 1, 2, 3, &c.; and I decline to make any other of the admissions required by the said notice.

Dated this —— day of ——, 187—.

E. F., solicitor for the defendant [*or as may be*].

---

564. Affidavit of due signature of admissions (*k*).

Formal parts: see post No. 693.

I, X. Y., of —— [clerk to Mr. G. H., of ——], the solicitor in this action for the above-named plaintiff [*or as may be*], make oath, and say as follows:

1. On the —— day of ——, 187—, I was present and did see Mr. E. F., the solicitor in this action [*Or*, matter] for the above-named defendant [*or as may be*], sign the admission hereunto annexed marked A. (*l*); and the signature "E. F.," subscribed to the said admission, is of the proper handwriting of the said Mr. E. F.

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565. Affidavit of service of notice, and of refusal to admit.

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, I served Mr. E. F., the solicitor in this action for the defendant [*or as may be*], with the

(*g*) See R. S. C. Ord. LVII. 6.

(*h*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; and note (*d*), to No. 402 *ante*.

(*j*) The admission should be indorsed on the notice or on a duplicate thereof; Chitty, Forms, 143, note (*b*).

(*k*) An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, will be sufficient evidence of such admissions; R. S. C. Ord. XXXII. 4. For form of affidavit, see Chitty, Forms, 143.

(*l*) For form of memorandum of exhibit, see *post* No. 723.

notice in writing dated the —— day of ——, 187—, now produced and shown to me, and marked A. (*m*), and addressed to [*State whom*]; and purporting to be a notice to admit documents in this action [*Or*, matter], by delivering a true copy of the said notice to, and leaving the same with,

[*If served personally, say:*] the said Mr. E. F., personally, at ——.

[*If not served personally, say:*] the clerk [*Or*, servant; *or as may be*] of the said E. F., at his address for service, situate at [*State where*].

2. The said E. F. inspected the documents specified in the said notice, at the time and place mentioned in such notice.

Or, The said E. F. has inspected the documents specified in the said notice since the aforesaid service thereof.

Or, The said E. F. has not, nor has the said defendant [*or as may be*], nor any other person on his behalf, inspected the documents specified in the said notice, or any of them, since the aforesaid service of the said notice.

3. The said defendant [*or as may be*], and his solicitor [*Or*, agent] in this action [*Or*, matter], have refused or neglected to admit the said documents, or any of them, as required by the said notice; and no admission of the said documents, or any of them, hath in fact been made by the said defendant, or by any person on his behalf [*or as may be*].

4. [*Show means of knowledge.*]

Section II.—Documentary Evidence (*a*).

(1.) *Compelling the production of documents by a subpœna duces tecum.*

566.

Præcipe for subpœna duces tecum (aa).

[*Same as* No. 626 *post, adding the words*, "and *duces tecum*," *after the words "subpœna ad testificandum."*]

567.

Subpœna duces tecum (b).

Formal parts, as in No. 627 *post.*

Victoria [*&c.; as in* No. 627 *post*].

To [*Insert the name or names of the witness or witnesses*] greeting.

We command you [*If more than one, add:* and every of you],

(*m*) For form of memorandum of exhibit, see *post* No. 723.

(*a*) See Dan. Pr. 757—781.

(*aa*) See Cons. Ord. XXVIII. 1.

(*b*) See Cons. Ord. Sched. E. Nos. 2, 3; and see note (*d*) to No. 627 *post*, which applies as well to subpœnas *duces tecum* as to subpœnas *ad test.*; except the provisions of Cons. Ord. XXVIII. 3, it being provided by Cons. Ord. XXVIII. 4, that no more than three persons shall be included in one subpœna *duces tecum*, and that the party suing out the same shall be at liberty to sue out a subpœna for each person if it shall be deemed necessary or desirable.

that notwithstanding any excuse you [and every of you] personally be and appear before [*State whom; as in* No. 627 *post*] at such time and place as the bearer hereof shall by notice in writing (*c*) appoint.

[*If the documents are to be produced on the trial of the action, or of any question or issue therein, add:*] and so from day to day until the action [*Or,* the questions in the action] hereinafter mentioned be tried,

to testify the truth according to your knowledge in a certain action depending in our High Court of Justice, wherein A. B. and another are plaintiffs, and E. F. and others are defendants, on the part of the plaintiffs [*Or,* of the defendant E. F.; *or as may be*]; and that you then and there bring with you and produce [*here describe* (*d*) *concisely the documents which the witness is required to produce; as thus:*] a deed of covenant dated 1st January, 1848, made between A. B. and C. D. of the first part, E. F. of the second part, and G. H. of the third part, an indenture of lease from A. B. and C. D. to E. F. and G. H., dated 1st February, 1848, an indenture of release between A. B. and C. D. of the first part, &c., dated the 2nd February, 1848, and a bill of exchange dated 1st May, 1840, for £100, at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H. And hereof fail not at your peril.

Witness [*&c.; see post* No. 627 (*e*)].

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568. Indorsement on *subpœna* (*f*).

[*Same as* No. 94 *or* No. 95 *ante.*]

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569. Notice to witness of time and place of attendance.

[*Same as* No. 629 *post.*]

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570. Motion paper for order for *subpœna duces tecum* to issue to compel attendance of witness in Scotland or Ireland (*g*).

[*Same as* No. 630 *post, adding the words* "and *duces tecum*," *after the words,* "*subpœna ad testificandum.*"]

(*c*) See *post* No. 629.

(*d*) As to the degree of particularity with which the documents must be described, see *Attorney-General* v. *Wilson*, 9 Sim. 526; *Newland* v. *Steet*, 11 Jur. N. S. 596; 13 W. R. 1014, V.-C. K; *Lee* v. *Angus*, L. R. 2 Eq. 59; Dan. Pr. 802, note (*k*).

(*e*) See R. S. C. Ord. II. 8.

(*f*) See Cons. Ord. III. 2, 5.

(*g*) See 17 & 18 Vict. c. 34; 36 & 37 Vict. c. 66, s. 76; note (*h*) to No. 630 *post.*

571.
Affidavit in support.

Formal parts: see post No. 693.

1. [*Show the state of the action, as in paragraph* 1 *of* No. 631 *post.*]

2. X. Y., who is at present residing at ——, in that part of the United Kingdom called Scotland [*Or*, Ireland], is in possession of documents relating to the matters in question in this action, and which it is material and necessary for the plaintiff's [*Or*, the defendant E. F.; *or as may be*] to have produced upon the trial of this action.

3. [*Same as paragraph* 3 *of* No. 631 *post.*]

572.
Præcipe for *subpœna* (*h*).

[*Same as* No. 626 *post, adding the words,* "and *duces tecum*" *after the words,* "*subpœna ad testificandum,*" *and adding also the date of the order for the writ to issue*].

573.
The *subpœna* (*j*).

Formal parts, as in No. 627 *post.*

Victoria [*&c.; as in* No. 627 *post*].

To X. Y., greeting.

We command you that laying all other matters aside, and notwithstanding any excuse, wherever you shall be in our United Kingdom, you personally be and appear before [*Continue as in* No. 567 *ante, to end; at the foot of the writ, add the following notice*].

Notice.—Take notice that [*Continue as in* No. 633 *post, to end*] (*k*).

574.
Indorsement on *subpœna* (*l*).

[*Same as* No. 94 *or* No. 95 *ante.*]

(*h*) See Cons. Ord. XXVIII. 1.

(*j*) See note (*b*) to No. 567 *ante*; note (*d*) to No. 627 *post*; and note (*h*) to No. 630 *post.*

(*k*) See 17 & 18 Vict. c. 34, s. 2; and note (*h*) to No. 630 *post.*

(*l*) See Cons. Ord. III. 2, 5.

575. Notice to witness of time and place of attendance.

[*Same as* No. 629 *post.*]

576. Calling the witness on his *subpœna* (*m*).

[*Same as* No. 642 *post.*]

577. Indorsement on *subpœna* of non-appearance of witness (*m*).

[*Same as* No. 643 *post.*]

578. Examiner's certificate of non-attendance of witness or of his refusal to produce documents (*n*).

Formal parts: as in No. 644 *post.*

I certify that an appointment was made with me for the —— day of —— inst., to take the examination of witnesses in this action, and that no person of the name and description of X. Y., of [*address and description*], attended to be examined before me on that day [*Or*, and that X. Y., of [*address and description*], attended before me on that day, but refused to produce the documents mentioned in his *subpœna* or any of them].

Dated this —— day of ——, 187—.

C. B.,
Examiner.

579. Affidavit of service of *subpœna*, and notice.

[*Same as* No. 645 *post. The whole of the subpœna should be recited in the second paragraph.*]

(*m*) See note (*s*) to No. 642 *post.*
(*n*) See note (*t*) to No. 644 *post.*

(2.) *Notice to produce documents in the possession of the opposite party.*

580.
Notice to produce documents (*o*).

Formal parts: see ante No. 21.

Take notice that you are hereby required to produce to [*State whom; as thus:*]

the Court; *Or,*

the Court and jury; *Or,*

J. A., esquire, one of the official referees of the Supreme Court; *Or,*

A. B., esquire, a referee specially appointed in this action;

at the trial of this action [*or as may be*] the following documents, that is to say: [*Here describe the documents with sufficient particularity to inform the opposite party what documents he is required to produce, as thus:*] a deed of covenant dated 1st January, 1846, made between A. B. and C. D. of the one part and E. F. of the other part, an indenture of lease from A. B. to C. D., dated the 1st February, 1848, an indenture of release between A. B. and C. D. of the first part, E. F. of the second part, and G. H. of the third part, dated 2nd February, 1848, a bill of exchange dated 1st May, 1840, for £100, at three months, drawn by A. B. upon and accepted by C. D., and endorsed by E. F. and G. H.

[*Conclude thus:*] And all other deeds, documents, letters, books, memoranda, papers, and writings whatsoever, containing any entry, memorandum, minute, or other matter in anywise relating to the matters in question in this action or any of them.

581.
Affidavit of service thereof.

[*Same as paragraph* 1 *of* No. 565 *ante, substituting* "produce" *for* "admit."]

(3.) *Notices under* 20 *&* 21 *Vict. c.* 77, *s.* 64.

582.
Notice of intention to adduce in evidence a probate, &c., as proof of a testamentary disposition of real estate (*p*).

Formal parts: see ante No. 21.

Take notice that the plaintiff [*or as may be*] intends, at the trial of this action [*or other proceeding: to be here described*], to give in evidence as proof of the devise or testamentary disposition in his favour of the estate called Whiteacre, in the plaintiff's statement of claim in this action mentioned [*or as may be*], by the will of C. D., in the said statement of claim named, the probate of the said will,

Or, letters of administration with the said will annexed,

Or, a copy (*q*), stamped with the seal of the Probate Division of the High Court of Justice, of the probate of the said will, granted by the Probate Division of the High Court of Justice, Principal Registry [*Or,* District Registry of ——], on the —— day of ——, 187—, to the said plaintiff [*or as may be*].

(*o*) See Chitty's Arch. 328; Chitty, Forms, 145.

(*p*) See 20 & 21 Vict. c. 77, s. 64; Dan. Pr. 773.

(*q*) As to copies of wills and probates, see Dan. Pr. 773, note (*n*).

583. Notice of intention to dispute validity of such disposition (*p*).

Formal parts : see ante No. 21.

Take notice that the defendant A. B. [*or as may be*] intends, at the trial of this action [*or other proceeding : to be here described*], to dispute the validity of the devise or testamentary disposition in favour of the plaintiff [*or as may be*] of the estate called White-acre, in the plaintiff's statement of claim in this action mentioned, by the will of C. D., in the said statement of claim named [*or as may be*], and referred to in your notice, dated the —— day of ——, 187—, in this action, directed to me [*or as may be*].

(4.) *Certificate under* 14 *&* 15 *Vict. c.* 99, *s.* 14.

584. Certificate under 14 & 15 Vict. c. 99, s. 14 (*r*).

Pursuant to the statute 14 & 15 Vict. c. 99, I hereby certify the above to be a true copy of the record in my custody.

X. Y.,
Clerk of Records and Writs of the Chancery Division of the High Court of Justice [*or as may be*].

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(5). *Obtaining production of an original record of the Court.*

585. Motion paper for order for production of an original record (*s*).

Formal parts (*t*) *: see post* No. 1570.

To move on behalf of ——, that the proper officer may be

(*r*) See 14 & 15 Vict. c. 99, s. 14 ; 18 & 19 Vict. c. 134, s. 6 ; Dan. Pr. 760, 768, note (*m*).

(*s*) In nearly every case a record may be proved by a copy thereof ; Taylor on Evidence, ss. 1378, 1379 ; Smith Ch. Pr. (ed. 1862) 573, 574 ; and where it may be so proved, an application for the production of the original record will be refused ; *A.-G.* v. *Ray*, 6 Beav. 335 ; Dan. Pr. 769. In proceedings in the same Court and in the same cause, an office copy of a record will be received in evidence ; Taylor, ss. 1382, 1383 ; in other cases the record must be proved by means of an examined copy, or of a copy certified under 14 & 15 Vict. c. 99, s. 14 ; Taylor, ss. 1389, 1436, 1437. Where it is necessary to have the original record produced, an application should be made by motion, *ex parte*, to the Court to which the record belongs ; Taylor, s. 1379 ; Dan. Pr. 768. The application should be supported by an affidavit showing that the production of the original record is necessary ; Dan. Pr. 768. The application and the affidavit should be entitled in the action, the record of the proceedings wherein it is sought to have produced. If the order is made it is not necessary to issue a *subpœna ;* the officer of the Court will attend on the order, and a memorandum bespeaking his attendance being left with him ; Dan. Pr. 769. For form of memorandum, see *post* No. 587.

(*t*) The application should be entitled in the action, the record whereof it is sought to have produced.

directed to attend at [*State where, when, and on what proceeding, as in* No. 1745 *post,*], and then and there to produce the following documents, that is to say: [*here describe the documents, as thus:*] the original record of the proceedings in this action and the original depositions of C. D. and E. F., filed herein on the —— day of ——, 187—.

587.
Memorandum bespeaking attendance of officer with documents (*u*).

187—. B. No.

In the High Court of Justice.
—— Division.

B. *v.* D. (*v*).

For attendance with [*Describe the documents, as in the order*] at [*State where, as in the order*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party bespeaking the attendance, as in* No. 92 *ante.*]

(6.) *Obtaining production of documents deposited in Court under an order* (*w*).

[*Same as* Nos. 1744 *to* 1748 *post.*]

(7.) *Using evidence and other proceedings taken in another action.*

588.
Motion paper for leave to use, at hearing, evidence taken in another cause (*x*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*Or*, defendant A. B.], for leave, at the trial of this action, to read and make use of the following documents; namely [*Describe the documents; as thus:*] the affidavit of C. D., filed the ——, 187—, and the deposition of E. F.,

(*u*) See note (*s*) to No. 585 *ante*. As to the fees and expenses to be paid on bespeaking the officer's attendance, see Order as to Court Fees, Oct. 1875, Sched.; Order as to fees, April, 1876, Sched.; Wilson, 506, 522; note (*f*) to No. 1744 *post*.

(*v*) Short title of action, the record whereof is to be produced.

(*w*) See notes to Nos. 1744 to 1748 *post*.

(*x*) See Cons. Ord. XIX. 4, 5; Dan. Pr. 764, 767. For order in like case on motion, see Seton, ed. 3, 1275; on petition, *Richards* v. *French*, M. R. 9 Dec. 1869, Rolls Lib.; *Pilcher* v. *Rawlins*, M. R. 14 June, 1870, Rolls Lib.; *Hall* v. *Hargreaves*, M. R. 30 June, 1870, Rolls Lib.

filed the ——, 187—, in a certain action in this Court of A. *v.* W. (187 , A. No. 50), or office copies thereof: saving all just exceptions.

589. Petition of course for the like (*x*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*Or*, defendant A. B.]

Showeth as follows:

Notice of trial has been given in this action [*or as may be*]; and your petitioner is advised that it is material and necessary to his case to use as evidence at the trial of this action, the documents hereinafter mentioned.

Your petitioner therefore humbly prays, that he may be at liberty, at the trial of this action, to read [*Continue as in* No. 588 *to the end*].

And your petitioner will ever pray, &c.

590. Summons for the like (*y*).

Formal parts: see post No. 881.

on the part of the plaintiff, that upon the plaintiff or defendants giving to the other of them notice in writing of his or their intention in this behalf, they or either of them may be at liberty to read and use at the trial of this action, and in all subsequent proceedings therein, all or any of the affidavits filed or to be filed, and depositions or cross-examinations, if any, taken or to be taken, in an action wherein the W. & C. of M. are plaintiffs, and the above-named defendants are defendants, as if the same had been filed or taken in this action: saving all just exceptions to the admissibility of the whole or of any such affidavits, depositions, or cross-examinations, if any, as evidence at the trial of this action, and the subsequent proceedings therein.

(8.) *Using evidence taken in an action to perpetuate testimony.*

591. Notice of motion for leave to use evidence taken in an action to perpetuate testimony (*z*).

Formal parts: see post No. 1591.

on the part of the plaintiff, that the depositions of C. D., a witness examined in this action on the part of the plaintiff, may be published; and that all parties to a certain action of G. *v.* B. (187—,

(*x*) See note (*x*) to No. 588 *ante*.

(*y*) See *Dent* v. *Auction Mart Co.* (*Limited*), V.-C. W. at Chambers, 27 Nov. 1865, Reg. Lib. A. 2298; *Lord Kensington* v. *Metropolitan Railway Co.*, *Williams* v. *Same*, M. R. at Chambers, 8 Jan. 1866, Reg. Lib. A. 11; *Ridgway* v. *Ridgway*, M. R. at Chambers, 28 Feb. 1870, Reg. Lib. B. 725.

(*z*) See Dan. Pr. 1421, 1422. For form of order, see *Barker* v. *Barker*, M. R. 15 June, 1877, Reg. Lib. A. ; and see the orders in *Biddulph* v. *Lord Camoys*, M. R. 20 July, 1854, Reg. Lib. A. 1564; 19 Beav. 467;

G. No. ——), may be at liberty to read and make use of the said depositions as evidence in the said action of G. *v.* B. at the trial thereof, and on the subsequent proceedings therein, saving all just exceptions [*If it is desired to have the original record produced* (*a*) *add:*] and that the proper officer may be ordered to attend at the trial of the said action of G. *v.* B., and to produce the original record of the proceedings in this action, and the original depositions of the said C. D., filed herein on the —— day of ——.

592.
Affidavit in support (*b*).

Formal parts: see post No. 693.

1. This action was brought to perpetuate the testimony of witnesses only.

2. Issue having been joined, A. B., C. D., *&c.*, were examined as witnesses in this action on behalf of the plaintiff, and their depositions were filed on the —— day of ——, 187—.

3. [*State special grounds for the application* (*b*) *; as thus:*] The said C. D. died on the —— day of ——, 187—. He is the same person as C. D., named in the paper writing marked A., now produced and shown to me (*c*), and purporting to be a copy under the seal of the General Register Office, of the entry No. ——, in the certified copy of entries of deaths in the district of ——, in the county of ——, for the year 187—.

4. [*State on what proceedings the depositions are desired to be used.*]

5. [*If the notice of motion asks for the production of the original record* (*d*), *add:*] I am advised and verily believe that it is material and necessary that the original record of the proceedings in this action, and the original depositions of the said C. D. herein, should be produced [*State when, as:*] to the Court and jury on the trial of the said action of G. *v.* B., and that certified or examined copies thereof will be insufficient for the purpose.

6. [*State means of knowledge.*]

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30 April, 1855, Reg. Lib. A. 888; 20 Beav. 402. The application must be supported by an affidavit showing that the witness, whose depositions it is desired to use, is either dead, or unable from illness or other infirmity to attend and give evidence on the proceeding on which it is desired to use his deposition, or beyond the jurisdiction of the Court; Dan. Pr. 1421. For form of affidavit, see *post* No. 592.

(*a*) See note (*s*) to No. 585 *ante*.

(*b*) See note (*z*) to No. 591 *ante*.

(*c*) For form of memorandum of exhibit, see *post* No. 723.

(*d*) See note (*s*) to No. 585 *ante*.

(9.) *Proving exhibits at the hearing under an order* (*e*).

593. Motion paper for leave to prove exhibits at the trial or hearing (*f*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff [*or as may be*], for leave, at the trial of this action [*or as may be*], to prove by affidavit or *vivâ voce* the [*Describe what ; as thus :*]

execution of the deeds specified in the first part of the annexed schedule ; and the handwriting of the letters specified in the second part thereof :

saving all just exceptions.

The Schedule.

First part. } [*Describe the documents : as in*
Second part. } No. 559 *ante.*]

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594. Petition of course for leave to prove exhibits at the trial or hearing (*f*).

Formal parts : see post No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows :

1. [*Describe the state of the cause ; as thus :*] Issue has been joined in this action, and notice of trial of this action has been given for the —— day of ——, 187—.

2. Your petitioner is advised to prove by affidavit, or *vivâ voce*, at the trial of this action [*or as may be*], the documents specified in the schedule hereto.

Your petitioner therefore humbly prays, that he may be at liberty, at the trial of this action [*or as may be*], to read an affidavit or affidavits, or to examine a witness or witnesses *vivâ voce*, to prove the documents hereinafter mentioned, that is to say : [*State what ; as thus :*]

the execution of the deeds specified in the first part of the said schedule ; and the handwriting of the letters specified in the second part thereof : saving all just exceptions.

And your petitioner will ever pray, &c.

The Schedule above referred to.

First part. } [*Describe the documents : as in*
Second part. } No. 559 *ante.*]

(*e*) Where the evidence in an action to be used at the trial thereof is taken by affidavit, and any party desires to use a document which has not been proved before the evidence in the action is closed, he may obtain an order giving him liberty to prove the document at the trial either by *vivâ voce* evidence or by affidavit ; Dan. Pr. 777. As to what documents may be thus proved, see Dan. Pr. 777, 778 ; in general no document can be thus proved that requires more than proof of the execution, or of handwriting to substantiate it ; if it be anything that admits of cross-examination or that requires any evidence beyond that of handwriting, it cannot be received ; Dan. Pr. 778.

(*f*) The application for the order is *ex parte* by motion or petition of

595.
Oath, or affirmation of a witness called merely to prove a deed or document (*g*).

[*See* Nos. 646 *to* 660 *post.*]

596.
Questions put to such witness.

1. [*Where the person called is the attesting witness :*]
Is that your name and handwriting ?
Is that the handwriting of C. D. (*h*) ?
Did you see him sign and seal, and deliver this deed, as his act and deed ?
Or, Did you see him sign this document ?

2. [*Where the person called is not the attesting witness :*]
Are you acquainted with the handwriting of C. D., of, *&c.* (*j*) ?
Is that the handwriting of C. D. ?

597.
Indorsement, by the Registrar on deed or document exhibited.

——, 187—.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Short title of action or matter, and reference to the record.*]
This deed [*Or,* document] was produced at the trial of this action [*or as may be*], and its execution by [*Or,* the handwriting of] C. D. proved by A. B.

E. F., Registrar.

course ; Dan. Pr. 779. The order must describe minutely the exhibits to be proved ; as, if a deed, the date and parties' names ; if a letter, the date, and the names of the persons by whom it was written and to whom it was addressed ; *Ibid.* 780. For form of order on motion, see Seton, ed. 3, 1237, No. 3 ; on petition, see *Jegon* v. *Vivian*, M. R. 17 Dec. 1869, Rolls Lib. : *Feltham* v. *Turner*, M. R. 2 July, 1870, Rolls Lib. The order must be served on the opposite party two days previous to the trial ; Dan. Pr. 780.

(*g*) The attendance of an unwilling witness may be compelled by *subpœna ;* see *post* Nos. 626 *et seq.* If the document is in the possession of the witness or of a third person, its production may be compelled by a *subpœna duces tecum ;* see *ante* Nos. 566 *et seq.*

(*h*) The person whose signature to the deed or document is to be proved.

(*j*) The address and description of the person whose signature is to be proved should here be read from the deed or document.

598. Affidavit of execution of a deed and proving handwriting of other documents.

Formal parts: see post No. 693.

1. I saw [*Describe the party; as thus:*] the plaintiff A. B. [*Or,* the defendant C. D.; *Or,* E. F., the testator in the pleadings of this action named; *or as may be*] sign, seal, and as his act and deed deliver, the indenture [*Or,* deed poll] dated the —— day of ——, 187—, and marked A. (*k*), now produced and shown to me, and purporting to be [*Describe, shortly, what; as thus:*] a settlement on the intended marriage of the said plaintiff.

2. The signature "——," set and subscribed to the said indenture [*Or,* deed poll] as the party [*Or,* one of the parties] executing the same, is of the proper handwriting of the said plaintiff [*or as may be*].

3. The signature "——," set and subscribed to the attestation indorsed on the said indenture [*Or,* deed poll] of the execution thereof by the said plaintiff [*or as may be*], is of my proper handwriting.

4. I am well acquainted with the handwriting of the plaintiff A. B. [*or as may be*]: having seen him write.

5. The (sixteen) several letters marked respectively C., D., E., F., *&c.* (*l*), now produced and shown to me, and dated respectively the ——, 187—, *&c.*, are of the proper handwriting of the said A. B., and are respectively signed by him [*or as may be*].

6. The signature "——," to the agreement dated the ——, 187—, marked G. (*k*), now produced and shown to me, is also of the proper handwriting of the said A. B.

(*k*) Exhibit it. For form of memorandum of exhibit, see *post* No. 723.
(*l*) Exhibit them. For form of memorandum of exhibit, see *post* No. 723.

Section III.—Evidence of Witnesses.

Part I.—Evidence Vivâ Voce (*a*).

(1.) *Before whom given* (*b*).

(*a*) Subject to any agreement between the parties as to the mode of taking the evidence of witnesses in the action, and subject to the power of the Court or a Judge to order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, the witnesses at the trial of any action or at any assessment of damages are to be examined *vivâ voce*; R. S. C. Ord. XXXVII. 1; *Ibid.*, Ord. XXXVI. 31. Upon any motion, petition, or summons, evidence may be given by affidavit; R. S. C. Ord. XXXVII. 2; and this is the usual mode of giving evidence upon such applications; Dan. Pr. 782; but upon such applications evidence may be given *vivâ voce*; 15 & 16 Vict. c. 86, s. 40; 15 & 16 Vict. c. 80, s. 30; Cons. Ord. XXXV. 30; Ord. as to Evidence, 5 February, 1861, rule 15; *Re Coal Economising Gas Co., Gover's Case*, 24 W. R. 36. Where for the purpose of being used at the trial of the action, or on any motion, petition, or summons, evidence has been taken by affidavit, there may be a *vivâ voce* cross-examination on such affidavit; R. S. C. Ord. XXXVII. 2; *Ibid.*, Ord. XXXVIII. 4.

(*b*) In general the examination of witnesses, who are examined *vivâ voce* at the trial of an action, or at any assessment of damages, takes place in open Court at the trial; R. S. C. Ord. XXXVII. 1; or, if the trial takes place before a referee, then before the referee; R. S. C. XXXVI. 31; and where the evidence in chief on the hearing is taken by affidavit, the cross-examination of witnesses who have made affidavits takes place before the Court or the referee; R. S. C. Ord. XXXVIII. 4; R. S. C. Ord. XXXVI. 31. But the parties may agree that the *vivâ voce* examination of witnesses, or the cross-examination of witnesses who have made affidavits, shall take place before an examiner, in the manner provided by the 15 & 16 Vict. c. 86; Ord. as to Evidence, 5 Feb. 1861, rule 10; and the Court or a Judge may order that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; R. S. C. Ord. XXXVII. 1, 4; or the Court may award a writ in the nature of a mandamus or commission to the Judges of any Court in any colony or place under the dominion of Her Majesty in foreign parts (not in Scotland or Ireland; *Wainright* v. *Bland*, 3 D. P. C. 653), requiring such Judges to hold a Court for the examination of witnesses being within their jurisdiction; 13 Geo. III. c. 63, s. 44; 1 Wm. IV. c. 22, ss. 1, 2; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 76. Where a witness is examined *vivâ voce* for the purpose of using his evidence upon any application by motion, petition, or summons, or where a deponent is cross-examined upon an affidavit made by him for the purpose of being used upon any such application, such examination or cross-examination generally takes place before an examiner of the Court; 15 & 16 Vict. c. 86, s. 40; but it may take place before the Court itself on the hearing of the application; see *Re Coal Economising Gas Co., Gover's Case*, 24 W. R. 36; and after decree it may take place before the Judge's chief clerk; 15 & 16 Vict. c. 80, s. 30; Cons. Ord. XXXV. 30; Ord. as to Evidence, 5 Feb. 1861, rule 15.

599.
Consent to *vivâ voce* evidence being taken before an examiner (*c*).

187—. B. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

We, the undersigned solicitors for the plaintiff and defendants in this action, hereby mutually agree that the *vivâ voce* examination in chief, cross-examination, and re-examination of all the witnesses in this action [*Or*, of X., Y., and Z., witnesses in this action]

[*If the evidence in chief has been given by affidavit* (*d*), *say:*] that the cross-examination and re-examination of all persons who have made or shall make affidavits to be used at the trial of this action [*Or*, of X., Y., and Z., who have made affidavits to be used at the trial of this action]

shall be taken before the examiner of this Court [*Or*, before an examiner to be specially appointed for taking the examination of witnesses in this action] in the manner provided by the statute 15 & 16 Vict. c. 86.

Dated this —— day of ——, 187—.

L. M., solicitor for the plaintiff.
N. O., solicitor for the defendant C. D.
P. Q., solicitor for all the other defendants.

600.
Notice of motion or summons for the appointment of a special examiner (*e*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*Or*, of the defendant C. D.; *or as may be*], that A. B., of [*address*], barrister-at-law [*Or*, one of the solicitors of the Supreme Court; *or as may be*], may be appointed examiner for the purpose of taking [*State what; as thus:*]

the *vivâ voce* examination in chief, cross-examination, and re-examination of witnesses in this action; *Or*,

the *vivâ voce* examination in chief, cross-examination, and re-examination of X., Y., and Z., witnesses in this action; *Or*,

(*c*) The parties to an action may, by writing signed by them or their respective solicitors, and filed at the Record and Writ Clerk's Office, or (where the action is proceeding in a district registry) in the office of the district registrar, agree that the oral examination in chief and cross-examination of any witness or witnesses, or the cross-examination of any person or persons who shall have made an affidavit or affidavits, shall be taken before one of the examiners of the Court or a special examiner, in manner provided by the stat. 15 & 16 Vict. c. 86, and thereupon such examination may be taken accordingly; Ord. as to Evidence, 5 Feb. 1861, rule 10. As to the manner in which an examination taken before an examiner is to be conducted, see 15 & 16 Vict. c. 86, ss. 31 to 34; Ord. as to Evidence, 5 Feb. 1861, rule 10; Ord. 6 March, 1869, rule 16; Dan. Pr. 800, 806, 807, and *post* note (*l*) to No. 661.

(*d*) See R. S. C. Ord. XXXVII. 1; Ord. XXXVIII.; *post* No. 673, and note (*d*) thereto.

(*e*) Examinations are usually taken before the examiner of the Court, but

the cross-examination and re-examination of all persons who have made or shall make affidavits to be used at the trial of this action; *Or*,
the cross-examination and re-examination of X., Y., and Z., who have made affidavits to be used at the trial of this action.

601.
Affidavit in support.

Formal parts: see post No. 693.

1. [*State circumstances showing that it is necessary or proper that a special examiner should be appointed.*]

2. A. B., the person proposed to be appointed special examiner as aforesaid, is a barrister-at-law [*Or*, one of the solicitors of the Supreme Court; *or as may be*]. He has no interest in the matters in question in this action, and in my judgment is a fit and proper person to be appointed such special examiner as aforesaid.

3. [*Show means of knowledge.*]

602.
Notice of motion or summons to dispense with the attendance in Court of a witness, and to have his evidence taken before an examiner of the Court (*f*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*Or*, of the defendant C. D.; *or as may be*], that the attendance in Court on the trial of this action of X. Y.,

the Court will, upon special reasons being shown, appoint a special examiner; Dan. Pr. 801. The application should be supported by an affidavit, showing the special circumstances which render the appointment necessary or proper, and proving the fitness of the person proposed to be appointed; for form, see *post* No. 601. As to the powers of a special examiner, see 15 & 16 Vict. c. 86, s. 35. The fees of a special examiner are two guineas a day for his expenses for every day in which he is necessarily detained in the performance of his duties; and, in addition, three guineas a day for every day in which he is *bonâ fide* employed in the examination of witnesses; and in addition for travelling expenses, 1*s.* 6*d.* per mile; Sched. I. to Regulations as to Fees, H. T. 1860.

(*f*) The Court or a Judge may order that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined upon interrogatories or otherwise before a commissioner or examiner; R. S. C. Ord. XXXVII. 1; and by rule 4 of the same order, the Court or Judge is empowered, in any cause or matter where it shall appear necessary for the purposes of justice, to make any order for the examination upon oath before any officer of the Court or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein, on such terms, if any, as the Court or Judge may direct. The above rules enable the Court either to issue a commission to take the examination of witnesses, or to direct the examination to take place before an examiner; the Court of Chancery had the like power; 15 & 16 Vict. c. 86, ss. 28, 35; but it was the practice of that Court to direct the examination to take place before an examiner (either the ordinary examiner of the Court or an examiner specially appointed), in the manner provided by the stat. 15 & 16 Vict. c. 86 (see ss. 31 to 34), and not to issue a commission, nor to take the examination upon interrogatories; *Crofts* v. *Middleton*, 9

of [*residence and addition*], a witness in this action on behalf of the plaintiff [*or as may be*]

Or, of X. Y., of [*residence and addition*], a person who has made an affidavit, filed in this action on the —— day of ——, 187—, on behalf of the plaintiff [*or as may be*], and whom notice has been given to produce for cross-examination on his said affidavit before the Court at the trial of this action (*g*)

may be dispensed with ; and that the oral examination in chief, cross-examination, and re-examination of the said X. Y.

Or, and that the cross-examination of the said X. Y. upon his said affidavit

may be taken before C. B., esquire, one of the examiners of this Court at [*State where*], in the manner provided by the statute 15 & 16 Vict. c. 86 (*h*) ;

[*If the examiner is to attend out of London, add :*] And that the said C. B. may be directed to attend at [*State where*], aforesaid, for the purpose of taking such examination [*Or*, cross-examination] (*j*) ;

Hare, App. 18, 75 ; *Rawlins* v. *Wickham*, 4 Jur. N. S. 990 ; *Edwards* v. *Spaight*, 2 J. & H. 617 ; *London Bank of Mexico and South America* v. *Hart*, L. R. 6 Eq. 467 (where a commission was refused) ; Dan. Pr. 782, 812. Under the new practice, however, a commission has been granted for the examination of witnesses abroad upon interrogatories and *viva voce ; Bank of Castille* v. *Olaguivel*, M. R. 17 Feb. 1876 ; Pemb. 107 ; see *post* Nos. 607 *et seq.* As to issuing a writ in the nature of a mandamus or commission to the Judges of Courts in Her Majesty's dominions abroad, under 13 Geo. III. c. 63, s. 44, & 1 Wm. IV. c. 22, s. 1, see *post* Nos. 620 *et seq.* An order dispensing with the attendance of a witness at the trial, will only be made where it is shown that such attendance cannot be obtained ; *The M. Moxham*, 1 P. D. 116. The application should be supported by an affidavit, showing that the witness proposed to be examined is a material one, and showing also that his attendance at the trial cannot be obtained ; see *post* No. 606.

(*g*) See R. S. C. Ord. XXXVIII. 4, and *post* No. 688.

(*h*) See 15 & 16 Vict. c. 86. ss. 31 to 34 ; Ord. as to Evidence, 5 Feb. 1861, rule 10 ; Ord. 6 March, 1860, rule 16 ; Dan. Pr. 800, 806, 807 ; note (*l*) to No. 661 *post*.

(*j*) Upon the examination of a witness before the examiner of the Court the following fees are payable :—For every witness sworn and examined in the examiner's office (including oath) for each hour, 10*s.* ; for an examination of witnesses away from the examiner's office (in addition to reasonable travelling and other expenses) per day, £3. The examiner may require a deposit of stamps on account of fees, and a deposit of money on account of expenses, which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the examiner or his clerk taking the deposit must thereupon make a memorandum thereof, and deliver the same to the party making the deposit. The examiner may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amount so paid and deposited ; Ord. as to Court Fees, Oct. 1875, Sched. ; Wilson, 506. The fees payable are to be denoted by

And that the depositions taken upon such examination [*Or*, cross-examination] may be ordered to be filed in this Court. And that all parties may be at liberty to use the same as evidence in this action, saving all just exceptions (*k*).

603.

Notice of motion or summons to dispense with the attendance in Court of a witness, and to have his evidence taken before a special examiner (*l*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*Or*, of the defendant C. D.; *or as may be*], that [*Proceed as in* No. 602 *ante, down to the words* "may be dispensed with"]. And that G. H., of [*address*], barrister-at-law [*Or*, a solicitor of the Supreme Court; *or as may be*], may be appointed examiner for the purpose of taking the examination of the said X. Y. And that the examination in chief, cross-examination, and re-examination of the said X. Y.

Or, And that the cross-examination of the said X. Y. upon his said affidavit

may be taken before the said G. H. accordingly at [*State where*], in the manner provided by the statute 15 & 16 Vict. c. 86 (*m*). And that the depositions taken upon such examination [*Or*, cross-examination] may be ordered to be filed in this Court. And that all parties may be at liberty to use the same as evidence in this action, saving all just exceptions (*n*).

604.

Notice of motion or summons to dispense with the attendance in Court of a witness who is abroad, and for the appointment of a special examiner to take his evidence (*o*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*]

1. That the attendance in Court on the trial of this action of J. B., of ——, a witness in this action on behalf of the plaintiff [*or as may be*]

Or, of J. B., of ——, a person who has made an affidavit, filed in this action on the —— day of ——, 187—, on behalf of the plaintiff [*or as may be*], and whom notice has been given to produce for cross-examination on his said affidavit before the Court at the trial of this action (*p*);

means of adhesive stamps, which may be affixed either to the deposition, or to the order or application paper for examination; Ord. as to Fees, April, 1876, Sched.; Wilson, 522. For the regulations to be observed where a deposit is required, see Ord. as to Fees, April, 1876, and *post*, note (*f*) to No. 1744.

(*k*) See R. S. C. Ord. XXXVII. 4; and note (*f*), *supra*.

(*l*) See note (*f*) to No. 602 *ante*. As to the appointment of a special examiner, see note (*e*) to No. 600 *ante*. For form of affidavit in support of the application, see *post* No. 606.

(*m*) See note (*h*) to No. 602 *ante*.

(*n*) See R. S. C. Ord. XXXVII. 4; note (*f*) to No. 602 *ante*.

(*o*) See R. S. C. Ord. XXXVII. 1, 4, and note (*f*) to No. 602 *ante*. This form follows the order in *Crofts* v. *Middleton*, V.-C. T. 31 Jan. 1853, Reg. Lib. A. 405, 9 Hare, App. 75. For form of affidavit in support of the application, see *post* No. 606.

(*p*) See R. S. C. Ord. XXXVIII. 4, and *post* No. 688.

may be dispensed with. And that the oral examination in chief, cross-examination, and re-examination of the said X. Y.

Or, And that the cross-examination of the said X. Y., upon his said affidavit

may be taken before the examiner hereinafter named in the manner provided by the statute 15 & 16 Vict. c. 86 (*q*).

2. That in case the said J. B. shall be resident at or near M., in the colony of V., or in case the examination of the said J. B. can be conveniently taken at M. aforesaid, or in the said colony, J. G. F., of M. aforesaid, esquire, barrister-at-law, may be appointed an examiner for the examination of the said J. B. in this action.

3. That in case the said J. G. F. shall die or cease to reside within the said colony of V., before the taking or completion of the evidence of the said J. B., or shall decline or be unable to take the same, G. M. S., of M. aforesaid, gentleman, may be appointed an examiner for the examination of the said J. B.

4. That in case the said J. B. shall be resident at or near A., in the colony of S., or in case the examination of the said J. B. can be conveniently taken at A. aforesaid, or within the said colony of S., J. M. S., of A. aforesaid, gentleman, may be appointed an examiner for the examination of the said J. B.

5. That in case the said J. M. S. shall die, or cease to reside within the said colony of S., before the taking or completion of the evidence of the said J. B., or shall decline or be unable to take the same, W. J. W., of A. aforesaid, gentleman, may be appointed an examiner for the examination of the said J. B.

6. That the depositions taken upon such examination may be ordered to be filed in this Court, and that all parties may be at liberty to use the same as evidence in this action, saving all just exceptions (*r*).

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605. Notice of motion or summons to dispense with the attendance in Court of witnesses resident abroad, and for appointment of a special examiner to take their examination (*s*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that G. W. A. and T. K. B., both of ——, in the (Kingdom) of ——, solicitors, may be appointed examiners for the purpose of taking the examination in chief, cross-examination, and re-examination of such witnesses in this action as are resident in the said (Kingdom) of ——

Or, of taking the cross-examination and re-examination of all persons resident in the said (Kingdom) of ——, who have made affidavits in this action to be read and used at the trial thereof,

(*q*) See note (*h*) to No. 602 *ante*.

(*r*) See R. S. C. Ord. XXXVII. 4; and note (*f*) to No. 602 *ante*.

(*s*) See R. S. C. Ord. XXXVII. 1, 4; and note (*f*) to No. 602 *ante*. For form of order, see *Cooper* v. *Macdonald*, M. R. at Chambers, 13 April, 1865, Reg. Lib. A. 848; *Dunn* v. *Turquand*, V.-C. S. at Chrs. 25 March, 1865; Reg. Lib. A. 576; *London Bank of Mexico and South America* v. *Hart*, L. R. 6 Eq. 467. For form of affidavit in support of application, see *post* No. 606.

and whom notice has been or shall be duly given to produce for cross-examination on their said affidavits before the Court at the trial of this action (*t*)

And that the said G. W. A. may alone act as such examiner, unless he shall refuse to act or shall before the taking or completion of such examination, by illness or other cause, be incapacitated from acting. And that in that case the said T. K. B. may alone act as such examiner in taking or completing the said examination. And that such examination may be ordered to take place in the manner provided by the statute 15 & 16 Vict. c. 86 (*u*). And that the depositions taken upon such examination may be ordered to be filed in this Court. And that all parties may be at liberty to use the same as evidence in this action, saving all just exceptions (*v*). And that the attendance in Court on the trial of this action of any witness who may have been examined before the said G. W. A. or before the said T. K. B. may be dispensed with (*w*) without any further proof of the absence from this country of such witness than an affidavit of the solicitor of the party desiring to use such evidence as to his belief of the absence of such witness. And that the trial of this action may be postponed until after the return of the said depositions.

606.

Affidavit in support of application to dispense with the attendance in Court of a witness.

Formal parts: see post No. 693.

1. [*If the witness is to be examined in chief, proceed thus:*] X. Y., of [*address*], is a [*Or*, X. Y. and several other persons, resident at ——, in the (Kingdom) of ——, are] material and necessary witness [*Or*, witnesses] for me [*Or*, for the plaintiff; *Or*, for the defendant C. D.] on the trial of this action, and I am advised and verily believe that I [*Or*, the said plaintiff; *Or*, the said defendant C. D.] cannot safely proceed to the trial of this action without the evidence of the said X. Y. [*Or*, of the said X. Y. and of other persons resident in the (Kingdom) of —— aforesaid].

[*But if the witness is to be cross-examined on an affidavit made by him* (*x*), *say:*] All parties to this action having consented that the evidence to be read and used at the trial thereof should be taken by affidavit, an affidavit of X. Y., of [*address and description*], was on the —— day of ——, 187—, filed in this action on behalf of the plaintiff [*or as may be*]. On the —— day of ——, 187—, the defendant C. D., [*or as may be*] gave notice in this action requiring the production of the said X. Y. for cross-examination on his said affidavit before the Court at the trial of this action.

2. [*Show that the attendance of the witness or witnesses cannot be*

(*t*) See R. S. C. Ord. XXXVIII. 4, and *post* No. 688.
(*u*) See note (*h*) to No. 602 *ante*.
(*v*) See R. S. C. Ord. XXXVII. 4; and note (*f*) to No. 602 *ante*.
(*w*) See R. S. C. Ord. XXXVII. 1; and note (*f*) to No. 602 *ante*.
(*x*) See R. S. C. Ord. XXXVIII. and *post* Nos. 673 and 688.

obtained in Court at the trial (*y*) *: as thus* :] The said X. Y. for —— years now last past has been, and now is, by reason of great age and permanent infirmity, bed-ridden and unable to leave his house [*Or*, The said X. Y. is resident at ——, in the (Kingdom) of ——, out of the jurisdiction of this Honourable Court, and refuses to proceed to England for the purpose of giving evidence at the trial of this action ; *or as may be*].

3. [*If the appointment of a special examiner is asked for, state the circumstances rendering such appointment necessary or proper, and prove the fitness of the person sought to be appointed ; for form, see ante* No. 601.]

4. [*State means of knowledge.*]

607.
Notice of motion or summons for commission to issue for the examination of witnesses abroad (*z*).

Formal parts : see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to sue out a commission directed to two commissioners, one to be named by the plaintiff and the other to be named by the defendant for the examination *vivâ voce* [*Or*, upon interrogatories ; *Or*, upon interrogatories and *vivâ voce*], at ——, or elsewhere, in the (Kingdom) of ——, of witnesses in this action resident in the said (Kingdom) of ——, on behalf of all parties to this action [*Or*, of C. D. and E. F., as witnesses in this action on behalf of the plaintiff ; *or as may be*]. And that the depositions to be taken under and by virtue of the said commission may be ordered to be filed in this Court. And that all parties may be at liberty to use the same as evidence in this action, saving all just exceptions (*a*). And that the attendance in Court on the trial of this action of any witnesses who shall have been examined under the said commission may be dispensed with (*b*) without any further proof of the absence from this country of such witnesses than an affidavit of the solicitor of the party desiring to use such evidence as to his belief of the absence of such witnesses. And that the trial of this action may be postponed until after the return of the said commission. And that the costs of this application and of the execution of the order to be made thereupon, and all costs incidental thereto, may be costs in the action.

608.
Affidavit in support.

Formal parts : see post No. 693.

1. [*Prove that material and necessary witnesses are resident in the country to which it is proposed to issue the commission ; for form, see paragraph* 1 *of* No. 606 *ante.*]

(*y*) This must be shown ; *The M. Moxham*, 1 P. D. 116.

(*z*) See R. S. C. Ord. XXXVII. 1, 4 ; and note (*f*) to No. 602 *ante*. The application should be supported by an affidavit ; for form, see *post* No. 608. For order in like case, see *Bank of Castille* v. *Olaguivel*, M. R. 17 Feb. 1876 ; Pemb. 107 ; and see also Chitty, Forms, pp. 183, 184, 186.

(*a*) See R. S. C. Ord. XXXVII. 4 ; and note (*f*) to No. 602 *ante*.

(*b*) See R. S. C. Ord. XXXVII. 1 ; and note (*f*) to No. 602 *ante*.

609.
Præcipe for commission.

187—. B. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Seal a commission to examine witnesses directed to [*here insert names of Commissioners*].

Order dated —— day of ——, 187— [*Date of order for commission*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing commission, as in* No. 92 *ante.*]

610.
Commission to examine witnesses (*c*).

187—. B. No. —.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To ——, of [*address and description*], a commissioner named and appointed on behalf of the plaintiff hereinafter mentioned, and ——, of [*address and description*], a commissioner named and appointed on behalf of the defendant hereinafter mentioned, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you and by these presents do give unto you full power and authority diligently to examine at —— or elsewhere in the (Kingdom) of ——, all such witnesses in this action resident at —— or elsewhere in the said (Kingdom) of ——, as may be produced for such examination by or on behalf of either party [*or as may be*] to a certain action now depending in our High Court of

(*c*) See Chitty's Forms, p. 189. The commission should follow closely the terms of the order for it to issue. It should be engrossed on parchment by the solicitor for the party obtaining the order, and will be sealed by the Record and Writ Clerk, or the district registrar, upon production of the order for the writ to issue; Cons. Ord. L. 37. Upon issuing it, a fee of £1 is payable by means of a stamp impressed upon the commission; Ord. as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522. Where the examination is to take place upon interrogatories, the interrogatories and cross-interrogatories should be annexed to the commission; Chitty, Forms, p. 189, note (*a*). As to the execution of the commission, see Dan. Pr. ed 2, 872—908, and Chitty, Forms, 194—196.

Justice, wherein A. B. is plaintiff and C. D. is defendant. And we command that such examination be taken *vivâ voce* [*Or*, upon interrogatories to be exhibited and put to the said witnesses by the party producing them for such examination [*If so, add:*] and that such party be at liberty to put additional *vivâ voce* questions to such witnesses upon matters and facts arising out of the answers given by such witnesses on the examination upon the written interrogatories]. And we further command that such witnesses be subject to cross-examination *vivâ voce* [*Or*, upon certain cross-interrogatories to be exhibited and put to them [*If so, add:*] and also *vivâ voce* upon matters and facts arising out of the answers given by such witnesses on the cross-examination upon the written interrogatories]. And we further command that such witnesses be subject to re-examination *vivâ voce*. And we further command you that without delay on a day or days and at a certain place or places at —— or elsewhere in the said (Kingdom) of ——, to be appointed for that purpose, you cause the said witnesses to come before you, and then and there examine and cross-examine each of them apart from the other upon *vivâ voce* questions [*Or*, upon interrogatories and cross-interrogatories ; *Or*, upon interrogatories and cross-interrogatories, and also upon *vivâ voce* questions, if any,] and also re-examine them respectively apart, as aforesaid, on *vivâ voce* questions if necessary, as aforesaid, on their respective corporal oaths, affirmations, or declarations, being first taken before you according to the form of the oath first indorsed hereon (*d*) upon the Holy Evangelists, or in such other manner as shall be sanctioned by the form of the several religions of the persons to be examined, and such as shall be considered by them respectively to be binding on their respective consciences; which oath, affirmation, or declaration, you are hereby empowered to administer to such witnesses respectively. And in case it shall happen that any witness or witnesses to be examined before you shall not understand the English language, we hereby give you full power and authority to employ one or more interpreter or interpreters to interpret the oath or oaths, affirmation or affirmations, declaration or declarations, which shall be administered to, and all and every the questions [*Or*, the interrogatories, cross-interrogatories, and *vivâ voce* questions, if any,] which shall be put [*Or*, exhibited or put] to any such witness or witnesses out of the English language into the language of such witness or witnesses; and also to interpret the answers and depositions of such witness or witnesses made to the said questions [*Or*, the said several interrogatories, cross-interrogatories, and *vivâ voce* questions, if any,] out of the language of such witness or witnesses into the English language. And that you do cause any such interpreter or interpreters that may be so employed in the execution hereof to be first duly sworn on his or their corporal oath or oaths, affirmation or affirmations, declaration or declarations, before you, according to the form of the oath thirdly indorsed hereon (*e*) upon the Holy Evangelists or otherwise

(*d*) See *post* No. 612. (*e*) See *post* No. 614.

in such manner as shall be sanctioned by the form of his or their several religions, and shall be considered by him or them to be binding on his or their conscience or consciences, which oath, affirmation, or declaration, you are hereby empowered to administer to such interpreter or interpreters. And that you do take such examinations, cross-examinations, and re-examinations, if any, and reduce them into writing in the English language on paper or parchment, and when you shall have so taken the same that you do without delay transmit the same inclosed in a cover under your seals to the Clerk of Records and Writs of the Chancery Division of the High Court of Justice, Chancery Lane, London [*Or*, to the Registrar of the District Registry of the High Court of Justice at ——], to be there filed of record in our said Court. And we command you that in the event of any witness on his examination in chief, cross-examination, or re-examination, producing any book, document, letter, paper, or writing, and refusing for good cause (such cause to be stated in his deposition) to part with the original thereof, you do annex to the depositions of such witness a true and correct copy of or extract from such original certified by you. And we further command you that, before you or either of you act in the execution hereof, you do severally take and subscribe the oath hereon secondly indorsed (*f*) upon the Holy Evangelists or otherwise in such manner as shall be sanctioned by the form of your several religions, and shall be considered by you respectively to be binding on your respective consciences. And we give each of you full power and authority to administer such oath to the other of you; and we also authorise either of you to take such oath in the absence of the other. And we further command that the clerk or clerks employed in taking, writing down, transcribing, or engrossing the deposition or depositions of witnesses, to be examined by virtue hereof, shall before he or they be permitted to act therein, take the oath hereon fourthly indorsed (*g*), which oath you are hereby empowered to administer to such clerk or clerks upon the Holy Evangelists or otherwise, in such manner as shall be sanctioned by his or their several religions, and shall be considered by him or them respectively to be binding on his or their respective consciences. And we further command that —— days previously to the examination of any witnesses on behalf of either party to the said action by virtue hereof, the commissioner named and appointed on behalf of such party do give or cause to be given unto the commissioner named and appointed on behalf of the other party to the said action notice in writing (*h*) under his hand of the time and place of such intended examination, and of the names, addresses, and descriptions of the witnesses intended to be examined, by delivering such notice to such last-named commissioner personally, or by leaving the same at his usual place of abode or business. And if such last-named commissioner shall neglect to attend pursuant to such notice, then and in such case we command

(*f*) See *post* No. 613. (*g*) See *post* No. 615.
(*h*) See *post* No. 617.

the commissioner named by the party on whose behalf such notice shall have been given to proceed with and take the examination of the witnesses named in such notice *ex parte*. And in such case we give such commissioner full power and authority to act alone in the execution hereof, and to do all such acts and things as the said two commissioners are hereby empowered and authorised to do. And we also give such commissioner full power and authority to adjourn any meeting or meetings or to continue the same *de die in diem* until all the witnesses named in the said notice shall have been examined, without giving any further or other notice of such subsequent meeting or meetings. And we give you, or such one of you as shall for the time being be acting in the execution hereof, full power and authority to do all such acts and things as are necessary and may be lawfully done for the due execution hereof.

Witness the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, 187— (*j*).

611. Indorsement on commission (*k*).

[*Same as* No. 94 *or* No. 95 *ante*.]

612. Oath to be administered to witness.

To the Witness.—You swear that you shall true answer make to all such questions as shall be asked you without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth—So help you God.

613. Oath to be taken by commissioner (*l*).

To the Commissioner.—You swear that you shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this action, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written—So help you God.

(*j*) The commission must bear date on the day on which it is issued, and must be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor be vacant, in the name of the Lord Chief Justice of England; R. S. C. Ord. II. 8.

(*k*) See Cons. Ord. III. 2, 5.

(*l*) See Chitty, Forms, p. 192.

614.
Oath to be taken by interpreter (*l*).

To the Interpreter.—You swear that you shall truly and faithfully, and without partiality to any or either of the parties in this action, and to the best of your ability, interpret the oath or oaths, affirmation or affirmations, declaration or declarations, which shall be administered to, and all and every the questions [*Or*, interrogatories and questions] which shall be put [*Or*, exhibited or put] to all and every witnesses or witness produced before and examined by the commissioners, or either of them, named in the commission within written, so far forth as you are employed by the said commissioners, or either of them, to interpret the same out of the English language into the language of such witness or witnesses; and also in like manner to interpret the answers and depositions made to such questions [*Or*, interrogatories and questions] out of the language of such witness or witnesses into the English language —So help you God.

615.
Oath to be taken by clerk (*m*).

To the Clerk.—You swear that you shall truly, faithfully, and without partiality to any or either of the parties in this action, take, write down, transcribe, and engross the depositions of all and every witness and witnesses produced before and examined by the commissioners, or either of them, named in the commission within written, so far forth as you are directed and employed by the said commissioners, or either of them, to take, write down, transcribe, or engross the said depositions—So help you God.

616.
Interrogatories for the examination of witnesses before examiner (*n*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Interrogatories [*Or*, Cross-interrogatories] to be exhibited on the part of the above-named plaintiff [*or as may be*] to witnesses to be produced, sworn, and examined on the part of the above-named plaintiff [*or as may be*] before —— and ——, commissioners appointed to take such examination, by order dated the —— day of ——, 187—.

1. Do you know the parties, plaintiff and defendant, above-named, or either and which of them, and how long have you known them respectively, or such one of them as you do know?

(*l*) See Chitty, Forms, p. 192.
(*m*) See Chitty, Forms, p. 193.
(*n*) See Dan. Pr. ed. 2, 854—860; Gresley, 547—558. See also Chitty, Forms, p. 193, and note (*a*).

2. [*Here should follow distinct interrogatories, according to the*
3. *subject-matter, or the witnesses to be examined. Each inter-*
4. *rogatory should conclude thus:* Declare the truth of the several matters in this interrogatory inquired after, according to the best of your knowledge, remembrance, and belief.]

Last Interrogatory (*o*).—Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the plaintiff [*or as may be*] in this action, or which may be material to the subject of this your examination or to the matters in question in this action? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated, together with your reasons at large.

617.
Notice of time and place for taking examination and of names, &c., of witnesses (*p*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Take notice that I shall attend at [*State where*] on ——day, the —— day of ——, 187—, at —— of the clock in the —— noon, for the purpose of taking the examination of the witnesses, whose names, addresses, and descriptions are stated in the schedule hereto, on the part of the plaintiff [*or as may be*], by virtue of the commission issued in this action, and dated the —— day of ——, 187—.

THE SCHEDULE.

Name.	Address.	Description.

Dated this —— day of ——, 187—.

Yours, &c.
X. Y.,
Plaintiff's [*Or*, Defendant's] commissioner.

To Mr. T. Z.,
Defendant's [*Or*, Plaintiff's] commissioner.

(*o*) See Ord. XXXII. Dec. 1833; Sand. Ord. 786; Beav. Ord. LVIII. Cresley, 547.

(*p*) See No. 610 *ante*.

618. Return of commissioners to be indorsed on commission (*q*).

The execution of this commission appears in the schedules hereto annexed.

G. H. } Commissioners.
J. K. }

619. Certificate of commissioners (*r*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

To Her Majesty's High Court of Justice in England.

We whose names and seals are hereunto subscribed, being (two of) the commissioners named in the commission hereunto annexed, do humbly certify as follows:

1. We did, on the —— day of ——, 187—, at ——, in the (kingdom) of —— [*Here give a clear and accurate statement, following the language of the writ, of the course of proceeding actually pursued. The names and addresses of the witnesses examined should be set out, and their examination should be referred to as annexed to the return*].

In testimony whereof we have hereunto set our hands and seals this —— day of ——, 187—.

G. H. (L. S.) }
J. K. (L. S.) } Commissioners.

620. Notice of motion for a *mandamus* to examine witnesses in a foreign dependency of the British crown (*u*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that a writ in the nature of a *mandamus* or commission may be ordered to issue, directed to the Chief Justice and other Judges of the High Court of Judicature at Fort William, in Bengal, in the East Indies [*or as may be; for a list of the British Dependencies abroad, see post* No. 622],

(*q*) This return must be indorsed on the commission and signed by the acting commissioners. The several documents should be annexed to the commission in the following order: (1.) The commission; (2.) The certificate; (3.) The depositions; and should be closed up and sealed by the acting commissioners, and transmitted by them to the Record and Writ Clerk's office, or to the district registry, as directed in the commission.

(*r*) There is no prescribed form of certificate; it should state the course of proceeding actually pursued, following, as nearly as possible, the language of the commission.

(*u*) By 13 Geo. III. c. 63, s. 44, 1 Wm. IV. c. 22, s. 1, and the Sup.

commanding them to hold a Court for the examination *vivâ voce* and on oath of witnesses in this action and for receiving other proofs therein

Or, to hold a Court for the cross-examination *vivâ voce* and on oath of all persons resident within the jurisdiction of the said High Court who have made affidavits in this action, to be read and used at the trial thereof, and notice to cross-examine whom has been or shall be duly given

pursuant to the statutes of the thirteenth year of King George the Third, chapter 63, and the first year of King William the Fourth, chapter 22, and to do and perform all such matters and things as by the said statutes are required and authorised to be done and performed. And that all witnesses so examined [*Or*, cross-examined] may be subject to cross-examination and re-examination [*Or*, may be subject to re-examination]. And that the said writ and all depositions and other proceedings taken thereunder may be ordered to be transmitted under the seals of two or more of the Justices of the said Court to the Clerk of Records and Writs of the Chancery Division of the High Court of Justice, Chancery Lane, London [*Or*, to the Registrar of the District Registry of the High Court of Justice at ——], and that the same may be filed in

Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 76, the Court is enabled in any action to award a writ in the nature of a *mandamus* or commission to the Judges of any Court in any colony or place under the dominion of Her Majesty in foreign parts, for the examination of witnesses resident in such colony or place; when such writ is awarded, the Judge or Judges to whom it is directed may compel the attendance and examination of witnesses in the same manner as in causes pending in the Court whereof they are Judges; 1 Wm. IV. c. 22, s. 2; and the examination when returned is to be allowed and read, and to be deemed good evidence at the trial or hearing of the action, as if the witnesses so examined had been present, and sworn and examined *vivâ voce* at such trial or hearing; 13 Geo. III. c. 63, s. 44. These enactments do not enable a writ for the examination of witnesses to be directed to any Court in Scotland or Ireland; *Wainright* v. *Bland*, 3 D. P. C. 653. When a person whose evidence it is desired to obtain is resident in a foreign dependency of the British Crown, there are three modes of proceeding to obtain such evidence: by appointing a special examiner; R. S. C. Ord. XXXVII. 1, 4; by issuing a commission; *Ibid.*; and, lastly, by directing a writ in the nature of a *mandamus* or commission to the Judges of the Court having jurisdiction in the place where the witness is resident, under the above enactments. Where a special examiner is appointed, or a commission issued, resort may be had to the Court having jurisdiction in the place where the witness is resident, or to a Judge thereof, to compel the attendance of the witness for the purpose of being examined; 22 Vict. c. 20. For the form in the text, see *Williamson* v. *Barbour*, M. R. 20 July, 1876; Pemberton, 109; and see Chitty, Forms, pp. 197, 198. The application must be by motion to the Court and not to a Judge in Chambers; *Clarke* v. *East India Co.*, 6 D. & L. 278; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 39. It should be supported by an affidavit; for form, see *post* No. 621.

this Court. And that all parties may be at liberty to use the said depositions and other proceedings as evidence in this action saving all just exceptions (*v*). And that the trial of this action may be postponed until the return of the said writ.

621.
Affidavit in support.

Formal parts : see post No. 693.

1. [*Prove that material and necessary witnesses, or that persons who have made affidavits and whom notice has been given to cross-examine, are resident within the jurisdiction of the Court to which it is proposed to issue the mandamus, see ante* No. 606.]

622.
List of places under Her Majesty's dominion in foreign parts.

I. Europe :

1. Isle of Man.
2. Jersey.
3. Guernsey.
4. Heligoland.
5. Gibraltar.
6. Malta and Gozo.

II. Asia :

1. The East Indies, consisting of the Presidencies of
   a. Bengal,
   b. Bombay,
   c. Madras.
2. Ceylon.
3. Hong Kong.
4. Singapore
5. Penang } Straits Settlements.
6. Malacca.

(*v*) By 13 Geo. III. c. 63, s. 44, the depositions are to be received in evidence, in the same manner as if the deponents had been present at the trial of the action, and had been thereon sworn and examined *viva voce* ; but by 1 Wm. IV. c. 22, s. 10, the depositions cannot be read in evidence at the trial without the consent of the party against whom they are offered, unless it appear that the deponent is beyond the jurisdiction of the Court, or is dead, or is unable from permanent sickness or permanent infirmity to attend the trial.

III. AFRICA:

1. Cape of Good Hope.
2. Natal.
3. British Kaffraria.
4. Sierra Leone.
5. Gambia.
6. Gold Coast.
7. Lagos.
8. St. Helena.
9. Mauritius.
10. Griqualand West.
11. The Transvaal.

IV. AMERICA:

(*a*) North America:

1. Canada:
   (*a*) Ontario.
   (*b*) Quebec.
   (*c*) Nova Scotia.
   (*d*) New Brunswick.
2. Prince Edward's Island.
3. Newfoundland.
4. Vancouver Island.
5. British Columbia.
6. Bermuda.

(*b*) South America:

1. British Guiana.
2. Falkland Islands.
3. Honduras.

(*c*) West Indies:

1. Jamaica.
2. Turks and Caicos Islands.
3. Trinidad.
4. Bahama Islands.
5. Barbadoes. } Windward Islands.
6. St. Vincent. }
7. Grenada. }
8. Tobago. }
9. St. Lucia. }
10. Antigua.
11. Montserrat.
12. St. Kitts (*Or*, St. Christopher's). } Leeward Islands.
13. Nevis. }
14. Virgin Islands. }
15. Dominica. }

V. Australia.

1. New South Wales.
2. Queensland.
3. Victoria.
4. South Australia.
5. Western Australia.
6. Tasmania.
7. New Zealand.
8. Fiji.

623.
Præcipe for writ in the nature of a mandamus or commission.

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D., E. F., and G. H. . Defendants.

Seal a writ in the nature of a *mandamus* or commission to examine witnesses directed to the Chief Justice and other Judges of the High Court of Judicature at Fort William, in Bengal, in the East Indies [*or as may be*].

Order dated —— day of ——, 187— [*Date of order for writ to issue*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing writ, as in* No. 92 *ante.*]

624.
Writ in the nature of a *mandamus* or commission to examine witnesses (*x*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D., E. F., and G. H. . Defendants.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Chief Justice and other Judges of the High Court of

(*x*) For this form, see Chitty's Forms, 197, 199. The writ should follow closely the terms of the order for it to issue. It should be engrossed on parchment by the solicitor for the party obtaining the order, and will be sealed by the Record and Writ Clerk, or by the district registrar, upon production of the order for the writ to issue; see Cons. Ord. I. 37. Upon issuing it a fee of £1 is payable, by means of a stamp impressed upon the commission; Ord. as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522.

Judicature at Fort William, in Bengal, in the East Indies [*or as may be*], greeting.

Whereas lately in our High Court of Justice, in a certain action there depending, wherein A. B. is plaintiff and C. D., E. F., and G. H. are defendants, by an order of our said Court made in the said action and bearing date the —— day of ——, 187—, it was ordered that this writ should be issued, commanding you to hold a Court for the examination *vivâ voce* and on oath of witnesses in this action, and for receiving other proofs therein

Or, to hold a Court for the cross-examination *vivâ voce* and on oath of all persons resident within the jurisdiction of your Court who have made affidavits in the said action, to be read and used at the trial thereof, and notice to cross-examine whom had been or should be duly given

pursuant to the statutes in this case made and provided, that is to say, the statute of the thirteenth year of his late Majesty King George the Third, chapter 63, and that of the first year of his late Majesty King William the Fourth, chapter 22, and to do and perform all such matters and things as by the said statutes are required and authorised to be done and performed. And by the said order it was further ordered that all witnesses so examined [*Or*, cross-examined] should be subject to cross-examination and re-examination [*Or*, subject to re-examination]. And that this writ and all depositions taken thereunder should be transmitted under the seal of two or more of the Justices of your said Court to the Clerk of Records and Writs of the Chancery Division of the High Court of Justice, Chancery Lane, London [*Or*, to the Registrar of the District Registry of the High Court of Justice at ——]; and that the same should be filed in our said High Court of Justice. Now, therefore, we command you that with all convenient speed you do hold a Court for the examination *vivâ voce* and on oath of witnesses in the said action and for receiving other proofs therein

Or, hold a Court for the cross-examination *vivâ voce* and on oath of all persons resident within the jurisdiction of your said Court who have made affidavits in the said action to be read and used at the trial thereof, and notice to cross-examine whom has been or shall be duly given

pursuant to the aforesaid statutes. And that you do and perform all such matters and things as by the aforesaid statutes are required and authorised to be done and performed. And we hereby give you full power and authority so to do (*y*). And in what manner you shall have executed this our writ make appear to us in our Court aforesaid immediately after the execution thereof, under the seal of your said Court, together with this writ and the depositions

(*y*) As to the power of the Judge or Judges to whom the writ is directed to compel the attendance and examination of witnesses thereunder, see 1 Wm. IV. c. 22, s. 2; and note (*u*) to No. 620 *ante*.

and other proceedings taken thereunder, as directed by the aforesaid statutes in that behalf.

Witness the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, 187— (*z*).

625.
Indorsement on writ (*a*).

[*Same as* No. 94 *or* No. 95 *ante.*]

(2.) *Compelling the Attendance of Witnesses* (*b*).

626.
Præcipe for *subpœna ad testificandum* (*c*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. and C. D. . . . Plaintiffs,
and
E. F., G. H., and J. K. . Defendants.

Seal a *subpœna ad testificandum* on behalf of the plaintiffs [*Or*,

(*z*) The writ must bear date on the day on which it is issued, and must be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor be vacant, in the name of the Lord Chief Justice of England; R. S. C. Ord. II. 8.

(*a*) See Cons. Ord. III. 2, 5.

(*b*) Where a witness is resident within the jurisdiction of the Court, his attendance before the Court, or an examiner, or a commissioner, may be compelled by means of a writ of *subpœna ad testificandum*; see 15 & 16 Vict. c. 86, s. 40; Ord. as to Evidence, 5 Feb. 1861, rules 9, 20. Disobedience to this writ may be punished as a contempt of Court; or the party disobeying the writ may be proceeded against by action; Lush, Pr. 531; for forms of application to commit for a contempt of Court, see *post* Nos. 1902, 1904. Where a witness is resident out of the jurisdiction in Scotland or Ireland, his attendance on the trial may be compelled by a writ of *subpœna ad test.*, issued under 17 & 18 Vict. c. 34; see *post* Nos. 630, 633, and notes thereto; or his attendance before an examiner or commissioner in the country where he is may be compelled by a Court or Judge having jurisdiction there; 6 & 7 Vict. c. 82; 22 Vict. c. 20. Where a witness is resident out of the jurisdiction in any of Her Majesty's foreign dominions, the Court having jurisdiction in the place where he is may compel his attendance either before such Court, or before an examiner or commissioner, for the purpose of being examined; 1 Wm. IV. c. 22, s. 2; 22 Vict. c. 20. Where the witness is resident out of the jurisdiction, but not in Scotland nor Ireland, nor in any of the British dependencies abroad, there is no mode of compelling his attendance either upon the trial, or before an examiner or a commissioner in the place where he is.

(*c*) See Cons. Ord. XXVIII. 1.

of the defendant E. F.; *or as may be*], directed to [*Insert name or names of witness or witnesses*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing subpœna, as in* No. 92 *ante.*]

627.

Subpœna ad testificandum (d).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. and C. D. . . . Plaintiffs,
and
E. F., G. H., and J. K. . Defendants.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To [*Insert the name or names of the witness or witnesses*] greeting.

We command you [*If more than one, add:* and every of you] that, laying all other matters aside and notwithstanding any excuse, you (and every of you) personally be and appear before [*State whom, as thus:*]

his lordship the Master of the Rolls; *Or,*
his lordship the Vice-Chancellor ——; *Or,*
the Judges of our High Court of Justice sitting for the trial of causes and issues in Middlesex [*Or,* in London]; *Or,*
the Judges of our High Court of Justice assigned to take the assizes in and for the county of ——; *Or,*
J. A., esquire, one of the Official Referees of the Supreme Court; *Or,*

(*d*) See Cons. Ord. Sched. E, Nos. 2, 3. A writ of *subpœna* is prepared by the solicitor for the party suing out the same. Every *subpœna ad test.* must contain three names when necessary or required; Cons. Ord. XXVIII. 3. It will be sealed by the Record and Writ Clerk, or (where the action is proceeding in a district registry) by the district registrar on filing a præcipe. For form of *præcipe*, see *ante* No. 626. On issuing the writ a fee of 2*s.* 6*d.*, lower scale, or 5*s.*, higher scale, is payable by means of a stamp impressed on the *præcipe;* Ord. as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522. In the interval between the suing out and service of a *subpœna*, any error in the names of the parties or witnesses may be corrected and the writ re-sealed upon leaving a corrected *præcipe* marked with the words "altered and re-sealed;" Cons. Ord. XXVIII. 5. The writ must be served within twelve weeks after it is issued; Cons. Ord. XXVIII. 9. Service is effected by delivery of a copy of the writ and of the indorsements thereon, at the same time showing the original writ; Cons. Ord. XXVIII. 6; and at the time of service the witness's reasonable expenses must be paid or tendered to him.

A. B., esquire, a Referee specially appointed in the action hereinafter mentioned ; *Or*,

C. B., esquire, one of the examiners of witnesses in our High Court of Justice ; *Or*,

A. B., esquire, the examiner specially appointed for the examination of witnesses in the action hereinafter mentioned ;

at such time and place as the bearer hereof shall by notice in writing (*e*) appoint

[*If the witness is to be examined on the trial of the action or of any question or issue therein, add* :] and so from day to day until the action [*Or*, the questions in the action] hereinafter mentioned be tried

to testify the truth according to your knowledge in a certain action now depending in our High Court of Justice, wherein A. B. and another are plaintiffs and E. F. and others are defendants, on the part of the plaintiffs [*Or*, of the defendant E. F. ; *or as may be*]. And hereof fail not at your peril.

Witness the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, 187— (*f*).

628.

Indorsement on *subpœna* (*g*).

[*Same as* No. 94 *or* No. 95 *ante.*]

629.

Notice to witness of time and place of attendance.

Formal parts : see ante No. 21.

Take notice that you are required to attend under the accompanying *subpœna* before [*State whom, as in the subpœna, see ante* No. 626], at [*State where, as thus :*]

his Court in Rolls Yard, Chancery Lane, London ; *Or*,

his Court in Lincoln's Inn, London ; *Or*,

at Westminster Hall, in the County of Middlesex ; *Or*,

at the Guildhall of the City of London ; *Or*,

at ——, in the said county of —— ; *Or*,

at his office situate at [*State where*] ;

on —— day, the —— day of ——, 187—, at —— of the clock in the forenoon of the same day

[*If the witness is to be examined on the trial of the action or of any issue therein, add :*] and so from day to day until this action [*Or*, the questions in this action] be tried

to give evidence on the part and behalf of the above-named plaintiffs [*Or*, defendant E. F. ; *or as may be*].

(*e*) For form of notice, see *post* No. 629.

(*f*) See R. S. C. Ord. II. 8.

(*g*) See Cons. Ord. III. 2, 5.

630. Motion paper for order for *subpœna ad testificandum* to issue to compel attendance of witness in Scotland or Ireland (*h*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiffs [*Or*, of the defendant ——], that a writ of *subpœna ad testificandum* may be ordered to issue commanding X. Y., of [*address*], in that part of the United Kingdom called Scotland [*Or*, Ireland], to attend the trial of this action wherever he shall be in the United Kingdom as a witness on the part of the plaintiffs [*Or*, of the defendant ——].

631. Affidavit in support.

Formal parts : see post No. 693.

1. [*Show the state of the action ; as thus :*] Issue was joined in this action on the —— day of ——, 187—, and notice of trial of this action [*Or*, of the questions or issues of fact in this action] has been given for the —— day of ——, 187—.

2. X. Y., who is at present residing at ——, in that part of the United Kingdom called Scotland [*Or*, Ireland], is a material and necessary witness for the plaintiffs [*Or*, for the defendant ——] on the trial of this action [*Or*, has made an affidavit in this action on behalf of the plaintiffs [*Or*, of the defendant ——], and notice has been given requiring the production of the said X. Y. for cross-examination upon the said affidavit before the Court at the trial of this action.]

3. The personal attendance of the said X. Y. on the trial of this action is required only for the purposes of this action as a witness on the behalf of the plaintiffs [*Or*, of the defendant ——], and for no other purpose.

632. *Præcipe* for *subpœna* in like case (*hh*).

[*Same as* No. 626 *ante, but the date of the order directing the writ to issue must be inserted.*]

(*h*) By 17 & 18 Vict. c. 34, and 36 & 37 Vict. c. 66, s. 76, the Court may order a writ of *subpœna ad test.* to issue in special form, commanding a witness, not within the jurisdiction of the Court, to attend the trial of the action wherever he shall be within the United Kingdom, and the service of such writ in any part of the United Kingdom is made as valid and effectual as if it had been served within the jurisdiction of the Court. The writ may not issue without a special order, and must have a notice at the foot thereof that it was issued by special order ; 17 & 18 Vict. c. 34, s. 2. Disobedience to the writ may be certified to the Court having jurisdiction in the place where the witness is, and may be punished by such Court ; s. 3. The application is *ex parte* ; Chitty, Forms, 204.

(*hh*) See Cons. Ord. XXVIII. 1.

633.
The *subpœna* (*j*).

Formal parts : as in No. 627 *ante.*
Victoria [*&c., as in* No. 627 *ante*].
To X. Y., greeting.
We command you that, laying all other matters aside and notwithstanding any excuse wherever you shall be in our United Kingdom, you personally be and appear before [*Proceed as in* No. 627 *ante, to end, and at the foot of the writ add the following notice :*]
Notice.—Take notice that this writ was ordered to be issued by an order of Her Majesty's High Court of Justice, dated —— day of ——, 187—, pursuant to the statute of the 17th and 18th of Victoria, chapter 34 (*k*).

634.
Indorsement on subpœna (*l*).

[*Same as* No. 94 *or* No. 95 *ante.*]

635.
Notice to witness of time and place of attendance.

[*Same as* No. 629 *ante.*]

636.
Motion paper for *habeas corpus ad testificandum* to compel attendance of a witness in custody (*m*).

Formal parts : see post No. 1570.
To move on behalf of the plaintiffs [*Or*, of the defendant E. F.; *or as may be*], that a *habeas* may issue directed to the Keeper of the Holloway Prison [*or as may be*], to bring X. Y. before [*State whom ; as in* No. 627 *ante*], on the trial of this action [*Or*, on the trial of the questions or issues of fact in this action ; *Or*, on an examination of witnesses in this action on the —— day of ——, 187—, and on such other days as the examiner shall appoint], to be examined as a witness for the plaintiffs [*or as may be*].
Or, to be cross-examined on his affidavit, filed in this action on the —— day of ——, 187—, notice having been given requiring his production for that purpose.
An affidavit in support and the Keeper's certificate of custody accompany.

(*j*) See note (*d*) to No. 627 *ante*, and note (*h*) to No. 630 *ante*.
(*k*) See 17 & 18 Vict. c. 34, s. 2 ; note (*h*) to No. 630 *ante*.
(*l*) See Cons. Ord. III. 2, 5.
(*m*) If a witness is in prison, he may be brought up under a writ of *habeas corpus ad testificandum* ; this writ cannot be issued without an order which may be obtained upon motion of course or on petition of course at the Rolls, supported by an affidavit ; Dan. Pr. 805.

637.
Petition of course for the like (*n*).

Formal parts: see post No. 1576.

The humble petition of the plaintiffs [*or as may be*].

Showeth as follows:

1. [*Show the state of the action; see paragraph* 1 *of* No. 631, *ante.*]

2. X. Y., now a prisoner in the Holloway Prison [*or as may be*], is a material and necessary witness in this action for your petitioners [*Or,* has made an affidavit in this action on behalf of your petitioners, and notice has been given requiring the production of the said X. Y. for cross-examination upon the said affidavit before the Court at the trial of this action].

3. By reason of the said X. Y. being a prisoner, your petitioners are unable to procure his attendance as a witness in this action.

Your petitioners therefore humbly pray that a writ of *habeas corpus* may issue directed to the Keeper of the said prison to bring the said X. Y. before [*State whom; as in* No. 627 *ante*], on the trial of this action [*Or,* on the trial of the questions or issues of fact in this action; *Or,* on an examination of witnesses in this action on the —— day of ——, 187—, and on such other days as the examiner shall appoint], to be examined as a witness [*Or,* to be cross-examined] as aforesaid.

And your petitioners will ever pray, &c.

638.
Affidavit in support of motion or petition.

Formal parts: see post No. 693.

1. [*Show the state of the action; see paragraph* 1 *of* No 631 *ante.*]

2. X. Y. is a material and necessary witness [*Continue as in paragraph* 2 *of* No. 637 *ante.*]

3. The said X. Y. is now a prisoner in the Holloway Prison [*or as may be*].

4. [*Show means of knowledge.*]

639.
Præcipe for the writ.

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. and another . . Plaintiffs,
and
E. F. and others . . Defendants.

Seal a writ of *habeas corpus ad testificandum* directed to the

(*n*) See note (*m*) to No. 636 *ante.*

Keeper of the Holloway Prison [*or as may be*], to bring X. Y. before [*State whom; as in order*], on the trial of this action [*or as may be; as in order*].

Order dated —— day of ——, 187— [*Date of order for writ to issue*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing writ; see ante* No. 92.]

640.

Writ of *habeas corpus ad testificandum* (*o*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge*].

Between A. B. and C. D. . . . Plaintiffs,
and
E. F., G. H., and J. K. . . Defendants.

Victoria [*&c.; as in* No. 627 *ante*].

To the Keeper of the Holloway Prison [*or as may be*] greeting:

We command you that you have the body of X. Y. detained in our prison under your custody, as it is said, under safe and secure conduct before [*State whom; as in order*] at [*State where; as in* No. 629 *ante*], on —— day, the —— day of ——, 187—, at —— of the clock in the forenoon of the same day

[*If the witness is to be examined on the trial of the action, or of any question or issue therein, add:*] and so from day to day until the action [*Or*, the questions in the action] hereinafter mentioned be tried (*p*)

[*If the witness is to be examined before an examiner, add:*] and on such other days as the said examiner shall appoint

then and there to testify the truth according to his knowledge in a certain action now depending in our High Court of Justice, wherein A. B. and another are plaintiffs, and E. F. and others are defendants on the part of the plaintiffs [*or as may be*]. And immediately after the said X. Y. shall have given his testimony before the said ——, that you return him, the said X. Y., to our said prison under safe and secure conduct; and have there then this writ.

Witness [*&c.; as in* No. 627 *ante*] (*q*).

(*o*) See note (*m*) to No. 636 *ante*. On issuing the writ a fee of 5*s.*, lower scale, or 10*s.*, higher scale, is payable by means of a stamp impressed on the *præcipe;* Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522. On issuing it, the order for the writ to issue must be produced to the officer issuing it. The writ when issued is left with the officer in whose custody the witness is, and his reasonable charges for bringing up the witness must be paid or tendered to him; Chitty, Forms, 205.

(*p*) See *Buckeridge* v. *Whalley*, 6 W. R. 180.

(*q*) See R. S. C. Ord. II. 8.

641.
Indorsement on the writ (*r*).

[*Same as* No. 94 *or* No. 95 *ante*.]

642.
Calling a witness on his *subpœna* (*s*).

X. Y.—Come forth and give your evidence in an action wherein A. B. is plaintiff [*Or*, A. B. and another [*Or*, others] are plaintiffs], and C. D. is defendant [*Or*, C. D. and another [*Or*, others] are defendants] pursuant to your *subpœna*.

643.
Indorsement on *subpœna* of non-appearance of witness (*s*).

The witness named X. Y., was called three times in open Court to give evidence on his *subpœna*, and did not appear.

Dated —— day of ——, 187—.

P. Q.,
Registrar [*Or*, Associate].

644.
Examiner's certificate of non-attendance of witness, or of his refusal to be sworn (*t*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge*].

Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . . Defendants.

I certify that an appointment was made with me for the —— day of ——, inst., to take the examination of witnesses in this action, and that no person of the name and description of X. Y., of [*address and description*], attended to be examined before me on that day [*Or*, and that X. Y., of [*address and description*], attended before me on that day, but refused to be sworn and examined as a witness in this action].

Dated this —— day of ——, 187—.

C. P.,
Examiner.

(*r*) See Cons. Ord. III. 2, 5.

(*s*) It is always advisable to have a witness called by the officer of the Court, and to have the fact of his non-appearance endorsed on the *subpœna*; Lush, Pr. 532. The usher is the proper officer to call the witness; Cons. Ord. XLI. 42.

(*t*) If a witness who has been duly served with a *subpœna* and notice to attend and be examined before an examiner, neglects or refuses to attend, or refuses to be sworn and examined, a certificate to that effect should be obtained from the examiner, and filed with the Record and Writ Clerk or district registrar.

645. Affidavit of service of *subpœna* and notice.

Formal parts: see post No. 693.

1. On the —— day of ——, 187—, I served X. Y., the person named in the *subpœna* next hereinafter mentioned, with a *subpœna*, issuing out of and under the seal of this honourable Court, by delivering to and leaving with the said X. Y., personally, at [*State where*], in the county of ——, a true copy of the said *subpœna*, and of the endorsement thereon; and I at the same time showed the said *subpœna*, so under seal as aforesaid, to the said X. Y.

2. By the said *subpœna*, the said X. Y. was commanded to personally be and appear before [*Recite subpœna down to* according to his knowledge] in this action on the part of [*State whom; as in subpœna*].

3. At the time of the aforesaid service of the said *subpœna*, I delivered to and left with the said X. Y., a notice in writing intituled in this action, addressed to the said X. Y., and purporting that the said X. Y. was required to attend [*Recite the notice*].

(3.) *Oaths, affirmations, and declarations of witnesses, examined vivâ voce* (*a*).

646. Ordinary form of oath where witness examined before the Court (*b*).

To the Witness.—The evidence you shall give to the Court [*Or*, to the Court and Jury], touching the matters in question, shall be the truth, the whole truth, and nothing but the truth—so help you God (*c*).

647. The like where witness examined before an examiner (*d*).

To the Witness.—You swear that you shall true answer make to all such questions as shall be asked you without favour or affection to either party; and therein you shall speak the truth, the whole truth, and nothing but the truth—so help you God (*c*).

(*a*) Oaths must be administered in a reverend manner; Cons. Ord. XIX. 14; as to the mode in which oaths are administered, see *post*, note (*l*) to No. 696. Where the examination takes place before the Court in the Chancery Division, the oath or declaration is to be administered by the Registrar; Cons. Ord. XLI. 42; where the examination takes place at the sittings in London or Middlesex, or at the assizes, it is administered by the associate; when the examination takes place before a commissioner or examiner, it is administered by the commissioner or examiner; see 15 & 16 Vict. c. 86, s. 35.

(*b*) Cons. Ord. Sched. (N), 8.

(*c*) If the witness is a Jew, the oath should conclude with the words, "So help you Jehovah."

(*d*) Braithwaite's Oaths in the Supreme Court of Judicature, p. 102.

648.

Oath of a Presbyterian under 1 & 2 Vict. c. 105.

To be uttered by the Witness.—I, A. B., do solemnly and sincerely declare that [*State in what form, and with what ceremony, an oath will be binding; as:*] holding up my right hand and swearing by Almighty God, and as I shall answer to Almighty God at the great day of judgment, is a form of oath that is most binding on my conscience; and I do [*Repeat the binding form, as:*] swear by Almighty God, and as I shall answer to Almighty God at the great day of judgment, that the evidence I shall give to the Court [*Or*, to the Court and jury], touching the matters in question, shall be the truth, the whole truth, and nothing but the truth.

649.

The like—before an examiner.

To be uttered by the Witness.—I, A. B., do [*Proceed as in* No. 648 *ante, down to* conscience; *and add:*] and I do swear [*Repeat the binding form; as:*] by Almighty God, and as I shall answer to Almighty God at the great day of judgment, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

650.

Affirmation by a Quaker or Moravian (*e*).

To be uttered by the Witness.—I, A. B., being one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers; *Or*, one of the United Brethren called Moravians] do solemnly, sincerely, and truly declare and affirm, that the evidence I shall give to the Court, touching the matters in question, shall be the truth, the whole truth, and nothing but the truth.

651.

The like—before an examiner (*e*).

To be uttered by the Witness.—I, A. B., being [*Proceed as in* No. 650 *ante, down to* affirm; *and add:*] that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

(*e*) See 3 & 4 W. IV. c. 49.

652.
Affirmation by an ex-Quaker or ex-Moravian (*f*).

To be uttered by the Witness.—I, A. B., having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers; *Or*, of the United Brethren called Moravians] and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm, that the evidence I shall give to the Court [*Or*, to the Court and jury], touching the matters in question, shall be the truth, the whole truth, and nothing but the truth.

653.
The like—before an examiner (*f*).

To be uttered by the Witness.—I, A. B., having been one of the people called Quakers [*Or*, one of the persuasion of the people called Quakers; *Or*, of the United Brethren called Moravians] and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

654.
Affirmation by a Separatist (*g*).

To be uttered by the Witness.—I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare, that the evidence I shall give to the Court [*Or*, to the Court and jury] touching the matters in question, shall be the truth, the whole truth, and nothing but the truth.

655.
The like—before an examiner (*g*).

To be uttered by the Witness.—I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

(*f*) See 1 & 2 Vict. c. 77.
(*g*) See 3 & 4 W. IV. c. 82.

656. Affirmation where witness has a conscientious objection to take an oath (*h*).

To be uttered by the Witness.—I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare, that the evidence I shall give to the Court [*Or*, to the Court and jury], touching the matters in question, shall be the truth, the whole truth, and nothing but the truth.

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657. The like—before an examiner (*h*).

To be uttered by the Witness.—I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare, that I shall true answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I shall speak the truth, the whole truth, and nothing but the truth.

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658. Declaration under the Evidence Further Amendment Act, 1869 (*j*)

I solemnly promise and declare, that the evidence given by me to the Court shall be the truth, the whole truth, and nothing but the truth.

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659. Oath of a Chinese (*k*).

To the Witness.—You shall tell the truth, and the whole truth : for the saucer is cracked ; and if you do not tell the whole truth, your body is cracked like this saucer.

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660. Oath of an interpreter of evidence.

To the Interpreter.—You shall well and truly interpret the oath that shall be administered, and the questions that shall be put, to the witness, as also the evidence that he shall give to the Court [*Or*, to the Court and jury], touching the matters in question [*Or*, as also the answers that he shall make to all such questions], to the best of your skill and knowledge—So help you God.

(*h*) See the C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 20 ; Cons. Ord. Sched. (N), 9.

(*j*) 32 & 33 Vict. c. 68, s. 4 ; and see the Evidence Amendment Act, 1870, 33 & 34 Vict. c. 49.

(*k*) A china saucer is placed in the witness's hand, who throws it down and breaks it, and the interpreter then administers the oath ; *R.* v. *Entrehman*, Car. & Marsh. 248.

661. Formal parts of depositions of witnesses examined in manner provided by 15 & 16 Vict. c. 86 (*l*).

(4.) *Formal parts of a deposition or examination taken by an examiner.*

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . . Defendants.

(*l*) The examination is to take place in the presence of the parties, their counsel, solicitors, or agents; and the witnesses examined are subject to cross-examination and re-examination; 15 & 16 Vict. c. 86, s. 31. The depositions should be written on foolscap paper, either book-wise or brief-wise; Ord. 6 March, 1860, rule 16. The depositions must be taken down in writing by the examiner; 15 & 16 Vict. c. 86, s. 32; *i. e.*, with his own hand; *Stobart* v. *Todd*, 18 Jur. 618; 2 W. R. 617; though the Court may order depositions to be filed, though not taken down by the examiner with his own hand; *Cooper* v. *Macdonald*, W. N. (1867) 41; *Bolton* v. *Bolton*, 2 Ch. D. 217. The depositions are not ordinarily to be taken down by question and answer, but in the form of a narrative; though it is in the discretion of the examiner to put down any particular question or answer if there should appear any special reason for so doing; 15 & 16 Vict. c. 86, s. 32. Any question or questions which may be objected to must be noticed or referred to by the examiner in or upon the depositions, and he must state his opinion upon such objection, and must refer to such statement on the face of the depositions, but he has no power to decide on the materiality or relevancy of any question; *Ibid.* The examiner may state any special matter to the Court; *Ibid.* When the depositions are concluded they are to be read over to the witness, and signed by him in the presence of the parties, or such of them as think proper to attend; *Ibid.* If the witness refuses to sign the depositions, the examiner must sign the same; *Ibid.* If the examiner dies without signing, the depositions may be signed by his successor; *Bryson* v. *Warwick and Birmingham Canal Co.*, 1 W. R. 124; and the Court may order depositions to be filed without the examiner's signature; *Stephens* v. *Wanklin*, 19 Beav. 585; *Fellhouse* v. *Bailey*, 14 W. R. 827. When the examination is concluded, the depositions are to be filed in the Record and Writ Clerk's office, or in the district registry; 15 & 16 Vict. c. 86, s. 34; and when they are filed for use on a trial, the depositions must, unless otherwise ordered, or unless they have previously been used upon any proceeding without having been printed, be printed by the party on whose behalf such depositions are taken and filed, who, to enable him to print, is entitled to a copy of the depositions written on draft paper on one side only; R. S. C. (Costs) Ords. I., II., V. The party printing must, on demand in writing, furnish to any other party or his solicitor any number of printed copies of the depositions, not exceeding ten, upon payment therefor, at the rate of one penny per folio for one copy, and one halfpenny per folio for every other copy; R. S. C. (Costs) Ord. V. 3; and see 15 & 16 Vict. c. 86, s. 34; where the depositions are not required to be printed, the party on whose behalf they are taken and filed must, upon payment of the proper charge, deliver a written copy to any other party; 15 & 16 Vict. c. 86, s. 34; R. S. C. (Costs) Ord. V. 8, 9. The party on whose behalf the deposition is filed must also take an office copy thereof; R. S. C. (Costs) Ord. V. 6.

Depositions of witnesses examined in the above action at [*State where*] (*m*),

before me,

C. B., examiner [*Or*, special examiner appointed by order in this action, dated the —— day of ——, 187—].

Sworn the —— day of ——, 187—. } X. Y., of [*residence and addition*], examined on behalf of the plaintiff [*or as may be*], saith as follows:

I was not, *&c.*

The plaintiff did not, *&c.*

—— day of ——, 187—. } Examination continued:

When I saw, *&c.*

Cross-examined on behalf of the defendant E.F. [*or as may be*]:—

I am now, *&c.*

Re-examined on behalf of the plaintiff:

The defendant E. F. was not, *&c.*

Cross-examined on behalf of the defendant E. F., upon new matter in the re-examination:

Having now seen, *&c.*

Re-examined on behalf of the plaintiff:

My impression still is, *&c.*

[*Where questions are objected to:*] (*n*).

Question.—Was there any agreement?

[This question was objected to on behalf of the defendant E. F. I stated that in my opinion the question was proper [*or as may be*]: and I refer it to the Court.

C. B.]

Question.—Did B. insist on those persons being parties to the conveyance?

[The witness objected to answer this question, on the ground that his knowledge as to that matter was acquired as solicitor for Mr. B. I stated that in my opinion the question was not proper [*or as may be*]: and I refer it to the Court.

C. B.]

X. Y.

Sworn the —— day of ——, 187—. } T. Z., of [*&c.; as above*].

T. Z.

I hereby certify that the evidence contained in this and the —— preceding sheets of paper was taken by me, and was afterwards read over to the respective witnesses, and signed by them in the presence of the parties attending.

C. B.

(*m*) When the examination is taken before an examiner of the Court away from his office, or before a special examiner anywhere, it should be stated where the examination is taken. See No. 662 *post*.

(*n*) See 15 & 16 Vict. c. 86, s. 32; and note (*l*), *supra*.

662.

The like where the examination takes place at different places (*o*).

Formal parts and title, as in No. 661 *ante.*

Depositions of witnesses examined in the above action at the times and places hereinafter mentioned,

before me,

C. B., examiner [*Or,* special examiner [*&c.; as in* No. 661 *ante*]].

I. At the Red Lion Hotel, Wells, in the county of Somerset.

Sworn the —— day of ——, 187—. } X. Y., of [*&c.; as in* No. 661 *ante*].

II. At the Crown Hotel, Bath, in the county of Somerset.

Sworn the —— day of ——, 187—. } T. Z., of [*&c.; as in* No. 661 *ante*].

I hereby certify [*&c.; as in* No. 661 *ante*].

663.

Formal parts of deposition of a witness cross-examined on his affidavit before an examiner (*p*).

Formal parts and title, as in No. 661 *ante.*

Deposition of a witness cross-examined in the above action at [*State where*] (*q*),

before me,

C. B., examiner [*Or,* special examiner [*&c.; as in* No. 661, *ante*]].

Sworn the —— day of ——, 187—. } X. Y., cross-examined on the part of the plaintiff [*or as may be*] on his affidavit, filed the —— day of ——, 187—, in this action, saith as follows :

I was formerly, *&c.*

Re-examined on the part of the defendant E. F. [*or as may be*].

I still consider, *&c.*

X. Y.

I hereby certify [*&c.; as in* No. 661 *ante*].

(*o*) See note (*m*) to No. 661 *ante.*

(*p*) See note (*l*) to No. 661 *ante.*

(*q*) See note (*m*) to No. 661 *ante,* and No. 662 *ante.*

(5.) *Demurrers by Witnesses.*

664. Demurrer or objection by a witness (*r*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . . Defendants.

Demurrer or objection of a witness examined in the above action (*s*),

before me,

C. D., examiner [*Or*, special examiner appointed by order in this cause, dated the ——, 187—].

Sworn —— day of ——, 187—. } X. Y., of [*residence and addition*], called on behalf of the plaintiff [*or as may be*].

Question :— } [*Set forth the question or questions put, the demurrer or objection of the witness thereto, and the examiner's opinion thereon : see ante* No. 661 (*t*).]
Answer :— }

X. Y.

I refer this matter to the Court.

C. D.

The evidence contained in this sheet of paper was taken by me, and was afterwards read over to the witness, and signed by him, in the presence of the parties attending.

C. D.

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665. Petition to set down demurrer (*u*).

Formal parts : see post No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows :

1. X. Y. was lately examined as a witness in this action on behalf of your petitioner, before C. D., esquire, one of the examiners of this honourable Court ;

Or, the examiner specially appointed to take the examination of witnesses in this action ;

(*r*) If a witness demurs or objects to any question or questions that may be put to him on the ground that he is protected from making the discovery sought, the question or questions put, and the demurrer or objection of the witness thereto, must be taken down by the examiner, and transmitted by him to the Record and Writ Clerk's office, or to the district registry, to be there filed ; 15 & 16 Vict. c. 86, s. 33.

(*s*) As to stating where the examination took place, see note (*m*) to No. 661 *ante*.

(*t*) The grounds of the witness's refusal to answer should be clearly stated ; Dan. Pr. 824.

(*u*) The party putting the question demurred to should, after the demurrer has been filed, obtain an order on petition of course to set the demurrer down for hearing, and its validity will then be decided on by the Court ; Dan. Pr. 825.

and he has demurred or objected to answer a certain question put to him on such examination.

2. The said question and demurrer or objection have been taken down by the said examiner in writing, and filed in the Record and Writ Clerks' Office, [*Or*, in the district registry at ——] pursuant to the statute in this behalf.

3. Your petitioner is desirous to have the validity of the said demurrer or objection decided.

Your petitioner therefore humbly prays, that the said demurrer or objection may be set down to be argued.

And your petitioner will ever pray, &c.

G. H.,
Plaintiff's [*Or*, defendant's] solicitor.
——, 187—.

666.

Notice of motion that an objecting witness may again attend the examiner (*v*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*Or*, defendant], that X. Y., a witness sworn and examined in this action on behalf of the plaintiff [*or as may be*], on the —— of ——, 187—, before C. D., esquire, one of the examiners of this honourable Court;

Or, the examiner specially appointed to take the examination of witnesses in this cause,

may be ordered to attend at his own expense before the said examiner, at such time and place as the said examiner shall appoint, to be further examined as a witness for the plaintiff [*or as may be*] in this action; and that the said X. Y. may be ordered then and there to answer the question which he demurred to, or objected to answer, upon his aforesaid examination, on the —— of ——, 187—; that is to say: [*State or set out the question*]; and that the said X. Y. may be ordered to pay the costs of and occasioned by his said demurrer or objection, and of this application.

(6.) *Translating depositions taken by an examiner.*

667.

Motion paper for appointment of translator of depositions (*w*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*Or*, defendant A. B.], that C. D., of [*residence and addition*], may be appointed to translate into English the depositions which have been taken in the (French)

(*v*) Instead of setting the demurrer down for argument, the party who asked the question objected to may move that the witness attend the examiner and be examined; and upon this motion the Court will dispose of the demurrer; Dan. Pr. 826.

(*w*) Where the examiner has to examine witnesses who cannot speak

language, under the order in this action, dated the ——, 187—, by E. F., the special examiner thereby appointed [*or as may be*]; and be sworn to the truth of such translation; and that such translation may be annexed to, and filed with, the said depositions.

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668. Petition of course for the like (*w*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*Or*, defendant A. B.]

Showeth as follows:

1. Pursuant to an order made in this cause dated the ——, 187—, witnesses have been examined *vivâ voce* before E. F., the special examiner thereby appointed [*or as may be*].

2. The depositions of the said witnesses have been taken in the (French) language.

Your petitioner therefore humbly prays, that C. D., of [*residence and addition*], may be appointed to translate the said depositions into English, and be sworn to the truth thereof; and that such translation may be annexed to, and filed with, the said depositions.

And your petitioner will ever pray, &c.

---

669. Verification of a translation of the depositions into English (*x*).

To the Deponent: Is that your name and handwriting?

You do swear that you well understand the French language [*or other language in which the depositions are written*]; and that the above-written is a true translation into the English language of the depositions in the French [*or as may be*] language thereunto annexed—So help you God.

C. D. { C. D., of [*residence and addition; as:*] No. 90, Cornhill, in the City of London, Notary Public, was sworn at [*State where, and when, as in* No. 696 *post*], that the above-written is a true translation into the English language of the depositions in the French [*or as may be*] language thereunto annexed, and affixed together at the top thereof, under the (notarial) seal of the said C. D., with his name thereto subscribed,

before me,

E. F. [*&c.; post* No. 696].

English, the usual and proper course is to take down the depositions in English through the medium of an interpreter. If, however, the depositions are taken down in a foreign language, an order must be obtained on motion or petition of course, appointing a person to translate the depositions, and ordering the translation to be annexed to and filed with the depositions; Dan. Pr. 813.

(*w*) See note (*w*) to No. 667 *ante*.

(*x*) The translator must be sworn to the accuracy of the translation; Dan. Pr. 813.

Part II.—Evidence by Affidavit (*a*).

(1.) *Proceedings to take evidence by affidavit.*

670. Summons for order that particular facts may be proved by affidavit (*b*).

Formal parts : see post No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty at the trial of this action to prove the following facts by affidavit ; that is to say :

1.
2.
3.
} [*Specify the facts distinctly and concisely.*]

671. Summons for order to read the affidavit of a witness (*c*).

Formal parts : see post No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to read at the trial of this action the affidavit of X. Y., of [*address and description*] ; and that the attendance in Court at the trial of this action of the said X. Y., may be dispensed with.

672. Affidavit in support.

Formal parts : see post No. 693.

1. [*Show that X. Y. is a material and necessary witness for the applicant ; see paragraph* 1 *of* No. 606 *ante.*]

2. [*Show that the witness cannot be produced in Court at the trial of the action ; see paragraph* 2 *of* No. 606 *ante.*]

3. [*Show means of knowledge.*]

(*a*) The Court or a Judge has power at any time for sufficient reason to order that any particular fact or facts be proved by affidavit, or that the affidavit of any witness be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable ; R. S. C. Ord. XXXVII. 1 ; but except in these cases the Court has no power to direct the evidence to be used at the trial of the action to be taken by affidavit ; *Pattison* v. *Wooler*, 1 Ch. D. 464 ; *Blackburn Union* v. *Brooks*, 26 W. R. 57 ; 7 Ch. D. 68 ; and see *Perkins* v. *Slater*, 1 Ch. D. 83 ; *A.-G.* v. *Willshire*, 1 Ch. D. 89. By consent of the parties, however, the evidence to be used at the trial may be taken by affidavit ; R. S. C. Ord. XXXVII. 1 ; R. S. C. Ord. XXXVIII. 1. Upon any motion, petition, or summons, evidence may be given by affidavit ; R. S. C. Ord. XXXVII. 2 ; and this is the usual mode of giving evidence upon such applications ; Dan. Pr. 782.

(*b*) See R. S. C. Ord. XXXVII. 1 ; and note (*a*), *supra.*

(*c*) The Court or a Judge has power at any time for sufficient reason to order that the affidavit of any witness may be read at the hearing or trial on such conditions as the Court or Judge may think reasonable ; but where it appears to the Court or Judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, no order is to be made authorising the evidence of such witness to be given by affidavit ; R. S. C. Ord. XXXVII. 1. The application should be supported by an affidavit showing that the witness cannot be produced at the trial ; for form, see *post* No. 672.

673. Consent to evidence in chief being taken by affidavit (*d*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. and others . . . Defendants.

We, the undersigned solicitors for the plaintiff and defendants, hereby mutually agree that the evidence in chief in this action, to be used at the trial thereof, shall be taken by affidavit [*If it is desired to alter the times limited by R. S. C. Ord. XXXVIII.*, 1, 2, 3, *for the parties to file their affidavits, add:*] And that the plaintiff shall, within —— days from the date of this consent, or within such further time as a Judge may allow, file his affidavits and deliver to the defendants' solicitors a list thereof; and that the defendants shall, within —— days after the delivery of such list, or within such further time as a Judge may allow, file their affidavits and deliver to the plaintiff's solicitor a list thereof; and that the plaintiff shall, within —— days after the delivery of such last-mentioned list, or within such further time as a Judge may allow, file his affidavits in reply, and deliver to the defendants' solicitors a list thereof.

Dated this —— day of ——, 187—.
L. M., solicitor for the plaintiff,
N. O., solicitor for the defendant C. D.,
P. Q., solicitor for all the other defendants.

674. Summons to extend time for filing affidavits in chief (*e*).

Formal parts: see post No. 881.
on the part of the plaintiff, that he may have —— days' further time to file his affidavits for use on the trial of this action, and to

(*d*) The parties may consent that the evidence in chief to be used at the trial of the action shall be taken by affidavit; R. S. C. Ord. XXXVII. 1; R. S. C. Ord. XXXVIII. The consent must be a formal written consent, and not one to be gathered from correspondence; *New Westminster Brewery Co.* v. *Hannah*, 1 Ch. D. 278. The guardian *ad litem* of an infant defendant may consent to the evidence being taken by affidavit, and no order of the Court is necessary to enable him to do so; *Knatchbull* v. *Fowle*, 1 Ch. D. 604; *Fryer* v. *Wiseman*, 24 W. R. 205. When the evidence is taken by affidavit, such evidence must be printed; R. S. C. Ord. XXXVIII. 6; but this rule does not apply to affidavits which have previously been used upon any proceeding without having been printed; R. S. C. (Costs) Ord. II.

(*e*) Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a Judge in Chambers may allow, the plaintiff must file his affidavits and deliver to the defendant or his solicitor a list

deliver a list thereof to the defendants or their solicitors, and that the costs of this application may be costs in the action (*f*).

675.

The like—after time has expired (*e*).

Formal parts: see post No. 881.

on the part of the plaintiff, that notwithstanding the expiration of the time allowed for the applicant to file his affidavits for use on the trial of this action, and to deliver a list thereof, he may be at liberty, on or before the —— day of ——, 187—, to file affidavits for use on the trial of this action, and to deliver a list thereof to the defendants or their solicitors; and that the costs of this application may be costs in the action (*f*).

676.

List of plaintiff's affidavits (*g*).

Formal parts: see ante No. 21.

Take notice that the plaintiff has filed and intends to read at the trial of this action the following affidavits; that is to say:

An affidavit of P. Q., filed the —— day of ——, 187—.
An affidavit of R. S., filed the —— day of ——, 187—.
An affidavit of T. U., filed the —— day of ——, 187—.

Dated this —— day of ——, 187—.

677.

Summons for leave to use affidavit filed after expiration of time allowed (*h*).

Formal parts: see post No. 881.

on the part of the plaintiff, that notwithstanding the expiration of the time allowed for the applicant to file his affidavits for use on the trial of this action, and to deliver a list thereof, he may be at liberty to read and use on the trial of this action the affidavit of X. Y., filed the —— day of ——, 187—, in the same manner as if the same had been filed with the affidavits already filed by the applicant for use on the trial of this action, and had been included in the list thereof delivered to the defendants or their solicitors [*If*

thereof; R. S. C. Ord. XXXVIII. 1. The time allowed may be enlarged by the Court or a Judge, and such enlargement may be ordered, although the application for the same is not made until after the expiration of the time allowed; R. S. C. Ord. LVII. 6.

(*e*) See note (*e*) to No. 674 *ante*.

(*f*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; and note (*d*) to No. 402 *ante*.

(*g*) See R. S. C. Ord. XXXVIII. 1; note (*e*) to No. 674 *ante*.

(*h*) See Dan. Pr. 725, 784, 785. The application should be a substantive application made before the action comes on for trial; it is too late to apply at the trial; *Smith* v. *Pilgrim*, 2 Ch. D. 138. The application should be supported by an affidavit showing a case for the indulgence.

[*If the time allowed for the defendants to file their affidavits in answer has expired, add:*] And that the defendants may have —— days to file an affidavit or affidavits in answer to the said affidavit of X. Y.

---

678. Summons to extend time for filing defendant's affidavits (*j*).

Formal parts: see post No. 881.
on the part of the defendant C. D. [*or as may be*], that he may have —— days' further time to file his affidavits for use on the trial of this action, and to deliver a list thereof to the plaintiff or his solicitors; and that the costs of this application may be costs in this action (*k*).

679. The like—after time has expired (*j*).

Formal parts: see post No. 881.
on the part of the defendant C. D. [*or as may be*], that notwithstanding the expiration of the time allowed for the applicant to file his affidavits for use on the trial of this action, and to deliver a list thereof, he may be at liberty, on or before the —— day of ——, 187—, to file affidavits for use on the trial of this action, and to deliver a list thereof to the plaintiff or his solicitor; and that the costs of this application may be costs in the action (*k*).

680. List of defendant's affidavits (*l*).

Formal parts: see ante No. 21.
Take notice that the defendant C. D. [*or as may be*] has filed and intends to read at the trial of this action the following affidavits, that is to say:
An affidavit of P. Q., filed the —— day of ——, 187—.
An affidavit of R. S., filed the —— day of ——, 187—.

---

681. Summons for leave to use affidavit filed after expiration of time allowed (*m*).

Formal parts: see post No. 881.
on the part of the defendant C. D. [*or as may be*], that notwithstanding the expiration of the time allowed for the applicant to file his affidavits for use on the trial of this action, and to deliver a list thereof, he may be at liberty to read and use on the trial of this action the affidavit of X. Y., filed the —— day of ——, 187—, in the same manner as if the same had been filed with the affidavits

(*j*) The defendant within fourteen days after delivery of the list of the plaintiff's evidence, or within such time as the parties may agree upon, or a Judge in Chambers may allow, must file his affidavits and deliver to the plaintiff or his solicitor a list thereof; R. S. C. Ord. XXXVIII. 2. The time allowed may be enlarged by the Court or a Judge, and such enlargement may be ordered, although the application for the same is not made until after the expiration of the time allowed; R. S. C. Ord. LVII. 6.

(*k*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; and note (*d*) to No. 402 *ante*.

(*l*) See R. S. C. Ord. XXXVIII. 2; note (*j*) to No. 678 *ante*.

(*m*) See note (*h*) to No. 677 *ante*.

already filed by the applicant for use on the trial of this action, and had been included in the list thereof delivered to the plaintiff's solicitors [*If the time allowed for the plaintiff to file his affidavits in reply has expired, add:*] And that the plaintiff may have —— days to file an affidavit or affidavits in reply to the said affidavit of X. Y.

682.

Summons to extend time for filing plaintiff's affidavits in reply (*n*).

Formal parts: see post No. 881.

on the part of the plaintiff, that he may have —— days' further time to file his affidavits in reply for use on the trial of this action, and to deliver a list thereof to the defendants or their solicitors; and that the costs of this application may be costs in the action (*o*).

683.

The like—after time has expired (*n*).

Formal parts: see post No. 881.

on the part of the plaintiff, that notwithstanding the expiration of the time allowed for the applicant to file his affidavits in reply for use on the trial of this action, and to deliver a list thereof, he may be at liberty, on or before the —— day of ——, 187—, to file affidavits in reply for use on the trial of this action, and to deliver a list thereof to the defendants or their solicitors; and that the costs of this application may be costs in the action (*o*).

684.

List of plaintiff's affidavits in reply (*p*).

Formal parts: see ante No. 21.

Take notice that the plaintiff has filed and intends to read at the trial of this action the following affidavits in reply; that is to say:

An affidavit of P. Q., filed the —— day of ——, 187—.
An affidavit of R. S., filed the —— day of ——, 187—.

Dated this —— day of ——, 187—.

(*n*) The plaintiff must file his affidavits in reply within seven days after the expiration of the time allowed for the defendants to file affidavits, and must deliver to the defendant or his solicitor a list thereof; R. S. C. Ord. XXXVIII. 3. The time may be enlarged by the Court or a Judge, and such enlargement may be ordered, although the application for the same is not made until after the expiration of the time allowed; R. S. C. Ord. LVII. 6.

(*o*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; and note (*d*) to No. 402 *ante*.

(*p*) See R. S. C. Ord. XXXVIII. 3; note (*n*) to No. 682 *ante*. By the R. S. C. Ord. XXXVIII. 3, the plaintiffs' affidavits in reply are to be confined to matters strictly in reply; but it has been held that, notwithstanding this rule, affidavits in reply may bring forward additional evidence in support of the original case, and are not confined to the points raised by the defendants' evidence; *Peacock* v. *Harper*, 7 Ch. D. 648.

685. Summons for leave to use affidavit in reply filed after expiration of time allowed (*q*).

Formal parts: see post No. 881.
on the part of the plaintiff, that notwithstanding the expiration of the time allowed for the applicant to file his affidavits in reply for use on the trial of this action, and to deliver a list thereof, he may be at liberty to read and use on the trial of this action the affidavit of X. Y., filed the —— day of ——, 187—, in the same manner as if the same had been filed with the affidavits in reply already filed by the applicant for use on the trial of this action, and had been included in the list thereof delivered to the defendants or their solicitors.

686. Summons for further time to serve notice requiring production of deponents for cross-examination (*r*).

Formal parts: see post No. 881.
on the part of the plaintiff [*or as may be*], that he may have —— days' further time to serve a notice, requiring the production of the deponents who have made the affidavits filed on behalf of the defendants [*or as may be*], for cross-examination before the Court at the trial of this action; and that the costs of this application may be costs in the action (*s*).

687. The like – when the time has expired (*r*).

Formal parts: see post No. 881.
on the part of the plaintiff [*or as may be*], that notwithstanding the expiration of the time allowed for that purpose, he may be at liberty, on or before the —— day of ——, 187—, to serve a notice requiring [*Continue as in* No. 686 *ante, to end*].

(*q*) See note (*h*) to No. 667 *ante*.

(*r*) When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit cannot be used as evidence unless by the special leave of the Court; R. S. C. Ord. XXXVIII. 4. The party producing such deponent for cross-examination is not entitled to demand the expenses thereof in the first instance from the party requiring such production; R. S. C. Ord. XXXVIII. 4. The time limited may be enlarged by the Court or a Judge, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time allowed; R. S. C. Ord. LVII. 6.

(*s*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; and note (*d*) to No. 402 *ante*.

688.
Notice to produce deponents for cross-examination (*t*).

Formal parts: see ante No. 21.

Take notice that the plaintiff [*Or*, the defendant C. D.; *or as may be*] intends, at the trial of this action, to cross-examine the several deponents named and described in the schedule hereto upon their respective affidavits therein specified.

And take also notice that you are hereby required to produce the said several deponents for such cross-examination before the Court at the trial of this action accordingly.

Name of deponent.	Description.	Date when affidavit filed.
Isaac Hart,	Lymington, Hants, Labourer.	19 Jan., 1877.
Thos. Brown,	Same place, Shop Keeper . .	18 Jan., 1877.
Wm. Jones,	Same place, Esquire	19 Jan., 1877.

689.
Consent that cross-examination shall be taken before an examiner (*u*).

[*Same as* No. 599 *ante.*]

690.
Notice of motion or summons that the cross-examination of a particular witness or witnesses may be taken before an examiner (*v*).

[*Same as* Nos. 602, 603, 604, 605 *ante.*]

(*t*) See R. S. C. Ord. XXXVIII. 4; note (*r*) to No. 686 *ante*. The party to whom the notice is given may compel the attendance of the deponent for cross-examination in the same way as he may compel the attendance of a witness to be examined; R. S. C. Ord. XXXVIII. 5. As to the mode of compelling the attendance of a witness, see *ante* note (*b*) at p. 360, and Nos. 626 *et seq.*

(*u*) In general, the cross-examination takes place before the Court at the trial; R. S. C. Ord. XXXVIII. 4; note (*r*) to No. 686 *ante;* but by consent it may be taken before an examiner of the Court, or a special examiner, in manner provided by the statute 15 & 16 Vict. c. 86; Ord. 5 Feb. 1861, rule 10. For form of application for appointment of a special examiner and of affidavit in support, see *ante* Nos. 600 and 601. For formal parts of deposition in like case, see *ante* No. 663.

(*v*) In general, the cross-examination takes place before the Court at the trial; R. S. C. Ord. XXXVIII. 4; note (*r*) to No. 686 *ante;* but the Court or Judge may order it to be taken before an examiner; R. S. C. Ord. XXXVII. 1, 4; note (*f*) to No. 602 *ante*. For form of affidavit in support of application, see No. 606 *ante*. For formal parts of deposition in like case, see *ante* No. 663.

[*Form* No. 607 *ante, can easily be adapted to this case.*]

691. Notice of motion or summons for commission to issue to take the cross-examination of witnesses abroad (*w*).

[*Same as* No. 620 *ante.*]

692. Notice of motion or summons for writ in the nature of a *mandamus* to take cross-examination of witnesses in foreign dependency of British Crown (*x*).

(2.) *Formal parts of Affidavits, Affirmations, and Declarations.*

693. Formal parts of an affidavit: one deponent (*a*).

In the High Court of Justice, Chancery Division. 187—. B. No. .
[*Name of Judge.*]

(*w*) In general, the cross-examination takes place before the Court at the trial; R. S. C. Ord. XXXVIII. 4; note (*r*) to No. 686 *ante;* but the Court or Judge may order it to be taken before a commissioner; R. S. C. Ord. XXXVII. 1, 4; note (*f*) to No. 602 *ante.* For form of affidavit in support of application, see No. 608 *ante.* Forms of proceedings under the order can easily be framed from Nos. 609 to 619 *ante.*

(*x*) See note (*u*) to No. 620 *ante.* For form of affidavit in support of application, see No. 621 *ante.* For forms of *præcipe* and of writ, see *ante* Nos. 623 and 624. For list of British dependencies in foreign parts, see *ante* No. 622.

(*a*) Any affidavit may be sworn to in print or in manuscript, or partly in print and partly in manuscript; R. S. C. Ord. LVI. 3. An affidavit must be written or printed on foolscap paper bookwise; though the Clerks of Records and Writs, or the district registrar, may receive and file affidavits written or printed otherwise, if in their opinion the circumstances of the case render such reception and filing desirable or necessary; Ord. 6. March, 1860, rule 16. Dates and sums may be written in words or figures; but if the affidavit is to be used in the Chancery Pay Office, sums should be written in words; *Re Watts,* 24 W. R. 701. Every quotation should be placed between inverted commas. The Clerks of Records and Writs, or the district registrar, may refuse to file any affidavit in which there is any knife-erasure; or which is blotted so as to obliterate any word; or which is improperly written; or so altered as to cause any material disfigurement; or in which there is any interlineation, unless the person before whom it is sworn authen-

Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . . Defendants (*b*).

ticates such interlineation with his initials, so as to show that it was made before the affidavit was sworn, and so as to mark the extent of such interlineation; Cons. Ord. I. 36. A notice has recently been issued by the Clerks of Records and Writs to the effect that no affidavit in which any unauthenticated alteration occurs will be filed without permission of the Judge to whose Court the action is attached; and no consent will be accepted as waiving any irregularity or informality in the affidavit; Braithwaite, Oaths, 59. No affidavit may be used before it is filed; Cons. Ord. XVIII. 3; on filing an affidavit a fee of 2s. is payable by means of a stamp impressed upon or adhesive to the document filed; Order as to Court Fees, Oct. 1875, Sched.; Order as to Fees, April, 1876, Sched.; Wilson, 506, 522. The party by or on whose behalf any affidavit is filed must leave a copy with the officer with whom the same is filed, who will examine it with the original, and mark it as an office copy; such copy must be printed where such affidavit is to be printed; R. S. C. (Costs), Ord. V. 6; and such party must produce such office copy upon every proceeding to which the same relates; *Ibid.*, V. 7. Where, under R. S. C. Ord. XXXVIII. the evidence to be used at the trial of the action is taken by affidavit, such evidence must be printed; R. S. C. Ord. XXXVIII. 6; but this does not apply to affidavits which have previously been used upon any proceeding without having been printed; R. S. C. (Costs), Ord. II. Other affidavits may be printed if all parties interested consent thereto, or the Court or Judge so order; R. S. C. (Costs), Ord. III. Where any affidavit is to be printed, the party on whose behalf the same is filed must print the same on cream-wove machine drawing foolscap folio paper, 19 lb. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two-and-a-half inches wide; R. S. C. (Costs), Ord. V. 1; R. S. C. Ord. LVI. 2. Where an affidavit is printed, the party printing must, on demand in writing, furnish to any other party or his solicitor any number of printed copies, not exceeding ten, upon payment therefor at the rate of one penny per folio for one copy, and one halfpenny per folio for every other copy; R. S. C. (Costs), Ord. V. 3; the solicitor of the party printing must give credit for the whole amount payable by any other party for printed copies; *Ibid.* V. 4; a party entitled to be furnished with a print will not be allowed any charge in respect of a written copy, unless the Court or Judge shall otherwise direct; *Ibid.*, V. 5. Where any party is entitled to a copy of an affidavit filed by or on behalf of another party, which is not required to be printed, such copy must be furnished by the party by or on whose behalf the same has been filed or prepared; *Ibid.*, V. 8; the party requiring any such copy, or his solicitor, must make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy must be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or Judge may in any case direct, and must be furnished accordingly upon demand and payment of the proper charges; *Ibid.*, V. 9. In the case of an *ex parte* application for an injunction or writ of *ne exeat regno*, the party making such application must furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be speci-

I (*c*), A. B. (*d*), of [*Place of residence, and description or addition* (*e*)], make oath and say (*f*) as follows (*g*):

1.

2.

Sworn [*&c.: see post* No. 696].

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fied in such request, or may have been directed by the Court; *Ibid.* V. 10. The name and address of the party or solicitor by whom any copy is furnished must be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be; *Ibid.*, V. 12. The folios of all printed and written office copies, and copies delivered or furnished to a party, must be numbered consecutively in the margin thereof, and such written copies must be written in a neat and legible manner on the same paper as in the case of printed copies; *Ibid.*, V. 13. In case any party or solicitor who shall be required to furnish a written copy shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made, will be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs will be due or payable to the solicitor so making default in respect of the copy or copies so applied for; *Ibid.*, V. 14.

(*b*) Every affidavit must commence with the words "In the High Court of Justice, —— Division," or, "In the Court of Appeal," and must be intituled in the action or matter in which it is made. The full title of the action or matter should be set forth. The affidavit must also bear the reference to the record.

(*c*) All affidavits must be taken and expressed in the first person of the deponent; otherwise the solicitor, party, or person filing the same will not, on any taxation of costs, be allowed the costs of preparing and filing such affidavit; Cons. Ord. XVIII. 1, 2.

(*d*) The full Christian and surnames, or title of honour, or the deponent should be stated. A married woman should be described as such, and the Christian and surnames of her husband be stated.

(*e*) The true place of residence, and description or addition of the deponent must be inserted: Dan. Pr. 788; as thus: of No. 80, Belgrave Square, in the county of Middlesex, esquire—*Or*, of No. 112, Cheapside, in the city of London (clerk to Mr. E. F., of the same place), gentleman, the solicitor in this action [*Or*, matter] for the plaintiffs—*Or*, defendant A. B. If the deponent is a party, or *quasi* party, to the action or proceeding, or is named in a judgment, order, or chief clerk's certificate made therein, his identity should be shown in the introductory part of the affidavit; as thus: one of the above-named plaintiffs—*Or*, one of the above-named defendants—*Or*, the petitioner named in the petition presented in this action [*Or*, matter] on the —— day of ——, 187—, *Or*, who, by an order in this action [*Or*, matter] dated the —— day of ——, 187—. had liberty to attend the proceedings—*Or*, in the decree [*Or*, order—*Or*, chief clerk's certificate] in this action [*Or*, matter] dated the —— day of ——, 187—, named. A party to the action may, however, describe himself as "the above-named plaintiff," or "the above-named defendant," without specifying any residence or addition, or other description: Dan. Pr. 788; Braithwaite's Oaths, 57.

(*f*) As to the necessity for these words, see Dan. Pr. 789.

(*g*) Every affidavit must be divided into paragraphs, and every paragraph

694.

Foot note to an affidavit (*h*).

This affidavit is filed on the part and behalf of the plaintiffs [*Or*, defendants; *or*, petitioner; *or*, respondents; *or*, A. B. and C. D.; *or as may be*].

E. F., Solicitor for the said plaintiffs [*or as may be*].

695.

Formal parts of an affidavit: two or more deponents (*j*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title of action or matter, and reference to the record; as in* No. 693 *ante.*]

We, A. B., of [*Place of residence, and description or addition*], and C. D., of [*Place of residence, and description or addition*], severally make oath and say, as follows:

1.
2.

Or, severally make oath and say:

And first I the said A. B., for myself say, as follows:

1.
2.

And I the said C. D., for myself say, as follows:

3.
4.

And we the said A. B., and C. D., further severally say, as follows:

5.
6.

Sworn [*&c.: see post* No. 696].

Foot note.

This affidavit [*&c.: ante* No. 694].

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must be numbered consecutively, and, as nearly as may be, confined to a distinct portion of the subject; 15 & 16 Vict. c. 86, s. 37. Affidavits must be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted; R. S. C. Ord. XXXVII. 3. Each statement in an affidavit must show the means of knowledge of the person making the statement; Ord. 5 Feb. 1861, rule 23. It is unnecessary to commence each paragraph with "that," or, "I say that," or, "and I further say that." A schedule referred to in an affidavit as "hereunder written" should be placed after the jurat; but a schedule referred to as "the schedule [*Or*, the first, &c., schedule] set forth in this my affidavit," should be placed before the jurat; Dan. Pr. 791. The schedules may also be embodied in the affidavit; *Ibid.* If schedules are placed after the jurat, the commissioner or other person before whom the affidavit is sworn must sign his name at the end of each schedule; Braithwaite's Oaths, 60.

(*h*) It must be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note must be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party; R. S. C. (Costs), Ord. V. 11.

(*j*) See notes to No. 693 *ante*.

696. Ordinary forms of oath and jurat: one deponent (*k*).

To the deponent: Is that your name and handwriting?
You do swear that the contents of this your affidavit are true—So help you God (*l*).

(*k*) Affidavits made in any action or matter pending in the Supreme Court may be sworn before the following persons: an affidavit sworn within the jurisdiction may be sworn before—(1). A Clerk of Records and Writs; Cons. Ord. I. 39; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 77; C. R. S. Ord. LXIII.; (2). The clerk of inrolments; *Ibid.*; (3). A district registrar; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 62; (4). A commissioner to administer oaths in the Supreme Court; 16 & 17 Vict. c. 78 (Oaths in Chancery Act), ss. 1, 2; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 76, 77, 82, 84; R. S. C. Ord. LXIII.; (5). A taxing officer of the Supreme Court or of any division thereof, provided the affidavit be made for the purpose of some proceeding before him; R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 23; (6). A chief clerk of the Master of the Rolls or of any Vice-Chancellor, provided the affidavit be made for the purpose of some proceeding directed to be taken before him; 15 & 16 Vict. c. 80, s. 30; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 77; R. S. C. Ord. LXIII.; (7). A person confined in any prison within the city of London, or the bills of mortality, may make an affidavit before the warden, keeper, or other chief officer of such prison or his deputy; Dan. Pr. 647, 648, and note (*g*). An affidavit sworn in Scotland, Ireland, the Channel Islands, the Isle of Man, or any place under the dominion of Her Majesty in foreign parts may be sworn before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such country or place; and judicial notice will be taken of the signature or seal of such Judge, Court, notary public, or person; 15 & 16 Vict. c. 86, s. 22; 16 & 17 Vict. c. 78, s. 6; 36 & 37 Vict. c. 66, s. 76. For a list of Her Majesty's dominions in foreign parts, see *ante* No. 622. Affidavits sworn in Scotland, Ireland, the Isle of Man, or the Channel Islands, may also be sworn before commissioners appointed by the Lord Chancellor to act in such places respectively; 6 & 7 Vict. c. 82, s. 1; 16 & 17 Vict. c. 78, s. 3; 36 & 37 Vict. c. 66, ss. 76, 77, 82, 84. An affidavit sworn in any place out of the dominions of Her Majesty, may be sworn before any British ambassador, envoy, minister, *chargé d'affaires*, or secretary of legation or of embassy, exercising his functions in any foreign country; or before any of Her Majesty's consuls or vice-consuls, in any foreign parts out of Her Majesty's dominions; or before any British vice-consul, acting consul, pro-consul, or consular agent (as well as every consul-general or consul), exercising his functions in any foreign place; 15 & 16 Vict. c. 86, s. 22; 18 & 19 Vict. c. 42, ss. 1, 2; 36 & 37 Vict. c. 66, s. 76. Judicial notice is taken of the seal or signature of a British diplomatic or consular agent abroad; 15 & 16 Vict. c. 86, s. 22; 18 & 19 Vict. c. 42, s. 3. An affidavit sworn abroad, out of Her Majesty's dominions, may also be sworn before a person who, by the law of the place in which it is sworn, is authorised to administer an oath; but in this case it must be proved that the person before whom the affidavit has been sworn is so authorised; Dan. Pr. 787; and see *post* No. 697. A commissioner to take oaths or affidavits is entitled for every oath to a fee of 1*s.* 6*d.*; R. S. C. (Costs), Sched. "Oaths." For every affidavit taken before an officer of the Court, a fee of 1*s.* 6*d.* is payable by means of a stamp impressed upon or adhesive to the affidavit; Ord. as to Court Fees, Oct. 1875, Sched.;

Jurat (*m*):

Sworn [*Or, if the deponent is not the only one to the affidavit, say:* Sworn by the deponent A. B.] at [*State where; as:*]

(1) Before a Chief Clerk.

the Chambers of the Master of the Rolls, in Rolls Yard, Chancery Lane, in the County of Middlesex,

Or,

the Chambers of the Vice Chancellor Malins, in Stone Buildings, Lincoln's Inn, in the County of Middlesex,

Or,

the Chambers of the Vice Chancellor Bacon, in New Square, Lincoln's Inn, in the County of Middlesex,

Or,

the Chambers of the Vice Chancellor Hall, in Chancery Lane, in the County of Middlesex,

Or,

(2) Before a Taxing Master.

my office, in Staple Inn, in the County of Middlesex, [*Or,*

Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522. Where an affidavit is sworn before a commissioner, it should not be sworn before a person acting as solicitor, or clerk to a solicitor, in the action or matter in which the affidavit is made, or who has been employed for the purpose of such action or matter, though such solicitor be not the solicitor on the record; *Duke of Northumberland* v. *Todd*, 7 Ch. D. 777; Dan. Pr. 786.

(*l*) See Braithwaite's Oaths, 44, 45. The like form is used in the case of a peer; Braithwaite's Oaths, 46. A Christian swears on the Holy Evangelists, except in cases within the 1 & 2 Vict. c. 105; a Jew upon the Pentateuch. A complete testament need not be used in either case. A Christian, in making oath, holds the book in his or her right hand: the hand being uncovered, and, in the case of a male person, the head being uncovered also. A Jew, in making oath, holds the book in his right hand, the hand being uncovered, but the head covered; if, however, the Jew wishes to make oath with his head uncovered, the officer cannot object to it; Dan. Pr. 638; Braithwaite's Oaths, 31. Oaths are to be administered in a reverent manner; Cons. Ord. XIX. 14.

(*m*) The jurat should be written at the end of the affidavit. It is usually placed at the right-hand corner; but may be written on either side of the page, or, if necessary, in the margin; but not on a page upon which no part of the statements in the affidavit appears; Dan. Pr. 792. It must express the time when, and the place where, the affidavit is sworn, including the name of the city, borough, or county; Cons. Ord. IV.; Dan. Pr. 792. An affidavit or any other document sworn to, may be re-sworn at any time before it is filed. If, on re-swearing, a second jurat is given, commencing with the word "re-sworn," then the first jurat should not be struck out, or in any manner interfered with; but if the second jurat commences with the word "sworn"—in other words, if the jurat on the re-swearing is such as is used when a document is first sworn to—then the first jurat must be struck out, and the striking out be authenticated by the initials of the commissioner before whom the affidavit is last sworn; Dan. Pr. 645.

A. B. (*n*).

Or,
the Record and Writ Clerks' office, Chancery Lane, in the County of Middlesex, (3) Before a Record and Writ Clerk.

Or,
the Inrolment Office, Chancery Lane, in the County of Middlesex, (4) Before the Clerk of Inrolments.

Or,
at the District Registry, in the City of Exeter, (5) Before a District Registrar.

Or,
my office, No. 5, New Square, Lincoln's Inn, in the County of Middlesex, (6) Before a Commissioner.

Or,
Louth, in the County of Lincoln,

Or,
St. Heliers, in the Island of Jersey, (7) Before a Channel Islands' Commissioner.

Or,
No. 300, Princes Street, in the City of Edinburgh, (8) Before a Scotch Commissioner.

Or,
No. 400, Montpelier Street, in the City of Dublin, (9) Before an Irish Commissioner.

[*State when; as:*] this —— day of ——, 187—,
before me (*o*),
C. D. (*p*)
Chief Clerk (*p*).

Or, C. D.,
Taxing Master.

Or, C. D.,
C. R. & W.

Or, C. D.,
Clerk of Inrolments.

[*Or*,

(*n*) The deponent must sign his name, or make his mark, at the side of the jurat: not underneath it; Dan. Pr. 792. For the special form required in the case of a marksman, see *post* Nos. 706, 707.

(*o*) These words are essential; see Dan. Pr. 792, note (*z*).

(*p*) The person before whom the affidavit is sworn must sign his name at the foot of the jurat, to which must be added his full official character and description; but not necessarily in his own handwriting; Dan. Pr. 792. The taxing masters, record and writ clerks, and clerk of inrolments, do not, however, in practice, ordinarily add their official description to their names; see Dan. Pr. 648, note (*k*).

Or, C. D.,
District Registrar.

Or, C. D.,
A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

Or, C. D.,
A Commissioner to administer Oaths within the Channel Islands in proceedings in the Supreme Court of Judicature in England.

Or, C. D.,
A Commissioner to administer Oaths within Scotland in proceedings in the Supreme Court of Judicature in England.

Or, C. D.,
A Commissioner to administer Oaths within Ireland in proceedings in the Supreme Court of Judicature in England.

[*or as may be.*]

697.

Affidavit verifying signature of a foreign magistrate, &c., to an affidavit, where not judicially noticed (*q*).

Formal parts: see ante No. 693.

1. I am well acquainted with the handwriting of A. B., of [*State address, as in jurat to affidavit, notarial act, or certificate, &c.; as thus:*] Dijon, in France, having seen him write.

2. The signature "————" set and subscribed to the jurat [*or as may be*] at the foot of the paper writing marked A. now produced and shown to me, and purporting to be an affidavit sworn in this action [*Or*, matter] by C. D. before the said A. B., is of the proper handwriting of the said A. B.

[*If so:*] and the seal affixed to or impressed on the said

(*q*) Where an affidavit sworn abroad is sworn before a British diplomatic or consular agent, judicial notice is taken of the seal or signature of such agent; 15 & 16 Vict. c. 86, s. 22; 18 & 19 Vict. c. 42, s. 3. But if an affidavit is sworn abroad before any other person, the Court requires to be satisfied that such person was authorised by the law of the country where the affidavit was sworn to administer an oath; and the signature of such person must also be verified; Dan. Pr. 787. These facts may be proved by affidavit, or by the certificate of some British diplomatic or consular agent in that country.

affidavit, near such signature, is the seal of office of the said A. B.

3. The said A. B. is a

[*Describe what, as in jurat to affidavit, notarial act, or certificate, &c.; as thus:*] notary public, duly admitted as such, and practising at Dijon aforesaid :

and by the law and practice of (France) the said A. B. had, at the time the said affidavit was sworn before him, full power and authority to administer oaths and take affidavits ; and affidavits taken before him in the manner aforesaid are received in the Courts of Judicature in (France), in all proceedings where affidavits are required or in use.

4. [*Show means of knowledge.*]

698.

Ordinary forms of oath and jurat: two or more deponents sworn together (*q q*.)

To each deponent: Is that your name and handwriting ?

To both, or all: You do severally swear that the contents of this your affidavit are true—So help you God.

A. B. } Sworn by the deponents A. B. and C. D. at [*Continue as in* No. 696 *ante, to end*].
C. D. }

699.

Oath of a blind deponent and jurat: where the officer reads to him the affidavit (*r*).

To the deponent: You do swear that the contents of this your affidavit are true—So help you God.

A. B.
—
[*Or,*
The mark of
×
A. B.]

Sworn by the deponent A. B., at [*State where, and when, as in* No. 696 *ante*], before me : I having first truly, distinctly, and audibly read over to him the contents of this affidavit.

[*If any exhibits are referred to in the affidavit, add:*] and explained to him the nature and effect of the exhibits therein referred to :

he being blind ; and he appeared to understand the same [*If a marksman, add:*] and made his mark hereto in my presence.

[*Signature and style of office: see ante* No. 696.]

(*q q*) See notes to No. 696 *ante*. Where all the deponents are not sworn at the same time a separate jurat must be written for each occasion on which the oath is administered ; Braithwaite's Oaths, 45, note (*b*). For form in such a case, see No. 696 *ante*.

(*r*) See Dan. Pr. 792. In the case of a blind man or marksman, the affidavit must first be read over to him, either by the person before whom the affidavit is sworn, or by some other person. In the latter case, such person must first be sworn that he has read over the affidavit, and any exhibits thereto, to the deponent, and must attest his signature or mark ; Dan. Pr. 792.

700.
Oaths and jurat: where a witness reads the affidavit to a blind deponent (*r*).

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B. [*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to]; and that he appeared to understand the same, and signed his name [*Or,* made his mark] to this affidavit in your presence—So help you God.

To the blind man: You do swear that the contents of this your affidavit are true—So help you God.

A. B.
—
[*Or,*
The mark of
×
A. B.]
Witness to the signature [*Or,* mark] of the deponent A. B:
C. D.,
of [*residence and addition* (*s*)].

Sworn by the deponent A. B., at [*State where, and when, as in* No. 696 *ante*]: C. D., the witness to the signature [*Or,* mark] of the deponent A. B., having been first sworn that he had truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B.
[*If any exhibits are referred to in the affidavit, add:*] and explained to him the nature and effect of the exhibits therein referred to:
he being blind; and that the deponent A. B. appeared to understand the same, and signed his name [*Or,* made his mark] to this affidavit, in the presence of the deponent C. D.:
before me [*&c.: see ante* No. 696].

701.
Ordinary form of oath of a deaf and dumb deponent, and jurat (*t*).

To the deponent: Is that your name and handwriting?

You do swear that the contents of this your affidavit are true—So help you God.

A. B. { Sworn at [*State where, and when, as in* No. 696 *ante*],
before me [*&c.*: *see ante* No. 696].

(*r*) See *ante*, note (*r*) to No. 699.

(*s*) The attestation should be written near the jurat.

(*t*) The procedure in this case is as follows, where the deponent is able to read and write: The officer before whom the affidavit is to be sworn should question the deponent, in writing, whether the signature placed beside the jurat is his name and handwriting, and give him the ordinary form of oath to read; he should then hand him the book, and administer the oath: pointing to the words of the oath as he proceeds; the deponent must then kiss the book, and the ceremony is complete; see Dan. Pr. 793; Braithwaite's Oaths, 50, 51; where the deponent is not able to read and write, it is suggested by M. Braithwaite (Oaths, p. 51) that the form applicable to the case of a foreigner sworn through an interpreter (see *post* No. 702), together with so much of the form applicable to the case of a marksman as relates to his mark (see *post* Nos. 706 and 707) may be made use of.

702.

Oaths and jurat: where a foreigner deposes in English, through an interpreter (*u*).

To the interpreter (*v*): Is that your name and handwriting (*w*)?

You do swear that you well understand the French language [*or other language of the foreigner*]; and that you have truly, distinctly, and audibly interpreted the contents of this affidavit to the deponent A. B.; and that you will truly and faithfully interpret to him the oath about to be administered to him—So help you God.

To the foreigner, through the interpreter: Is that your name and handwriting?

You do swear that the contents of this your affidavit are true—So help you God.

A. B.
—
C. D.,
of [*residence and addition* (*x*)].

Sworn at [*State where, and when, as in* No. 696 *ante*], by the deponent A. B., through the interpretation of C. D.: the said C. D. having been first sworn that he had truly, distinctly, and audibly interpreted the contents of this affidavit to the deponent A. B.; and that he would truly and faithfully interpret to the said A. B. the oath about to be administered to him:

before me [*&c.: see ante* No. 696].

703.

Oaths and jurat, where the affidavit is in a foreign language: the oath interpreted to the deponent.

To the interpreter (*y*): Is that your name and handwriting (*z*)?

You do swear that you well understand the French language [*or other language of the foreigner*]; and that you will truly and faithfully interpret to the deponent A. B. the oath about to be administered to him—So help you God.

To the foreigner, through the interpreter: Is that your name and handwriting?

You do swear that the contents of this your affidavit are true—So help you God.

A. B.
—
C. D.
of [*residence and addition* (*o*)].

Sworn at [*State where, and when as in* No. 696 *ante*], by the deponent A. B., through the interpretation of C. D.: the said C. D. having been first sworn that he would truly and faithfully interpret to the said A. B. the oath about to be administered to him:

before me [*&c.: see ante* No. 696].

(*u*) See Dan. Pr. 792; Braithwaite's Oaths, 48.

(*v*) The interpreter is usually a notary public; but it is not essential that he should be one.

(*w*) It seems desirable, but is not, in practice, considered essential, that the interpreter should sign the affidavit; Braithwaite's Oaths, 48, note (*k*).

(*x*) See last note. If the interpreter does not sign the jurat, his place of residence and addition must be stated in the jurat, immediately after the first occurrence of his name.

(*y*) See *ante* No. 702, note (*v*).

(*z*) *Ibid.*, note (*w*).

(*o*) *Ibid.*, note (*x*).

704.
Verification of a translation of the affidavit into English, in like case (*p*).

To the translator (*q*): Is that your name and handwriting?
You do swear that you well understand the French language [*or other language in which the affidavit is written*]; and that the above written is a true translation into the English language of the affidavit of A. B. in the French [*or as may be*] language thereunto annexed—So help you God.

C. D. { C. D., of [*residence and addition; as:*] No. 90, Cornhill, in the City of London, notary public, was sworn at [*State where, and when, as in* No. 696 *ante*], that the above written is a true translation into the English language of the affidavit of A. B. in the French [*or as may be*] language thereunto annexed, and affixed together at the top thereof under the (notarial) seal of the said C. D., with his name thereto subscribed:
before me [*&c.: see ante* No. 696].

705.
Jurat to affidavit of a Hindoo, interpreted to him in English (*r*).

(Seal)
—
C. D.
of [*residence and addition*].

Subscribed with a seal, and sworn to by the above-named A. B., at [*State where, and when, as in* No. 696 *ante*], through the interpretation of C. D.: the said C. D. having been previously sworn that he had first translated and explained to the said A. B., in the Hindostanee language, the contents of this affidavit; that the said A. B. perfectly understood the contents of this affidavit; that he the said C. D. would truly interpret the oath about to be administered to the said A. B.; and that the seal used by the said A. B. was his own signet, wherewith he always signed documents, according to the custom of his own country:
before me [*&c.: see ante* No. 696].

(*p*) Where an affidavit is written in a foreign language, a translation into English, verified by a competent person, must be filed with the original; see Braithwaite's Oaths, 48, note (*h*).

(*q*) It is not essential that the translator should be a notary public.

(*r*) Braithwaite's Oaths, 101. For forms of Oath, see *ante* No. 702.

706. Oath of a marksman, and jurat: where the officer reads to him the affidavit (*s*).

To the deponent: Is that your mark?

You do swear that the contents of this your affidavit are true—So help you God.

The mark of × A. B.

Sworn by the deponent A. B. at [*State where, and when, as in* No. 696 *ante*], before me: I having first truly, distinctly, and audibly read over to him the contents of this affidavit.

[*If any exhibits are referred to in the affidavit, add:*] and explained to him the nature and effect of the exhibits therein referred to:

and he appeared to understand the same, and made his mark hereto in my presence.

[*Signature and style of office: see ante* No. 696.]

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707. Oaths and jurat: where a witness reads the affidavit to a marksman (*t*).

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B. [*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to]; and that he appeared to understand the same, and made his mark to this affidavit in your presence—So help you God.

To the marksman: Is that your mark?

You do swear that the contents of this your affidavit are true—So help you God.

The mark of × A. B.

Witness to the mark of the said A. B.: C. D., of [*residence and addition*].

Sworn by the deponent A. B., at [*State where, and when, as in* No. 696 *ante*]: C. D., the witness to the mark of the said A. B., having been first sworn that he had truly, distinctly, and audibly read over the contents of this affidavit to the deponent A. B. [*If any exhibits are referred to in the affidavit, add:*] and explained to him the nature and effect of the exhibits therein referred to:

and that the deponent A. B. appeared to understand the same, and made his mark to this affidavit in the presence of the said C. D.:

before me [*&c.: ante* No. 696.]

(*s*) See *ante* No. 699, note (*r*); Braithwaite's Oaths, 46, and note (*d*).

(*t*) See *ante* No. 699, note (*r*); Braithwaite's Oaths, 46, 47.

708.

Oath of a Presbyterian, under 1 & 2 Vict. c. 105, and jurat (*u*).

To the deponent: Is that your name and handwriting?

To be uttered by the deponent: I, A. B., do solemnly and sincerely declare that

[*State in what form, and with what ceremony, an oath will be binding; as:*] holding up my right hand, and declaring to the truth of this my affidavit, as I shall answer to God at the great day of judgment,

is a form of oath that is most binding on my conscience; and I do solemnly and sincerely declare that the contents of this my affidavit are true

[*Repeat the binding form; as:*] as I shall answer to God at the great day of judgment.

A. B. { Sworn by the deponent A. B., pursuant to the Act 1st and 2nd Victoria, chapter 105, at [*State where, and when, as in* No. 696 *ante*],

before me [*&c.: ante* No. 696].

709.

Affirmation by a Quaker or Moravian (*e*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

[*Title of action or matter, and reference to the record; as in Form* No. 693 *ante.*]

I, A. B., of [*residence, and description or addition*], being one of the people called Quakers [*Or,* one of the persuasion of the people called Quakers; *Or,* of the United Brethren called Moravians], do solemnly, sincerely, and truly declare and affirm as follows:

1.
2.

Affirmed [*&c.: see post* No. 711.]

710.

Foot note to an affirmation (*f*).

This affirmation is filed on the part and behalf of [*&c.: Continue as in* No. 694 *ante, to the end*].

(*u*) See 1 & 2 Vic. c. 105, s. 1; Dan. Pr. 793; Braithwaite's Oaths, 51. For the form of oath of a witness in Scotland, and mode of administering it, see Dickson on Evid. in Scot., s. 1970, 2nd ed.

(*e*) See 3 & 4 Wm. IV. c. 49. See the notes to No. 693 *ante*, which apply as well to affirmations as to affidavits. For the case where there are two or more affirmants, see No. 695 *ante*.

(*f*) See note (*h*) to No. 694 *ante*.

711.
Declaration and affirmat, to affirmation by a Quaker or Moravian (*g*).

To the affirmant: Is that your name and handwriting?

To be uttered by the affirmant: I, A. B., do solemnly, sincerely, and truly declare and affirm that the contents of this my affirmation are true.

A. B. { Affirmed by the said A. B., at [*State where, and when, as in* No. 696 *ante*], before me [*&c.: ante* No. 696.]

712.
Affirmation by an ex-Quaker or ex-Moravian, under 1 & 2 Vict. c. 77 (*h*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title of action or matter, and reference to the record; as in* No. 693 *ante*].

I, A. B., of [*residence, and description or addition*], having been one of the people called Quakers [*Or,* one of the persuasion of the people called Quakers; *Or,* of the United Brethren called Moravians], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm as follows:

1.
2.

Affirmed [*&c.: see post* No. 714.]

713.
Foot note (*hh*)

This affirmation is filed on the part and behalf of [*Continue as in* No. 694 *ante, to end*].

714.
Declaration and affirmat thereto (*j*).

To the affirmant: Is that your name and handwriting?

To be uttered by the affirmant: I, A. B., having been one of the people called Quakers [*Or,* one of the persuasion of the people called Quakers; *Or,* of the United Brethren called

(*g*) See the notes to No. 696 *ante*. For the case where two or more affirmants make an affirmation together, see *ante* No. 698. For the case where the affirmant is blind, or deaf and dumb, or a foreigner, or a marksman, see *ante* Nos. 699 to 707.

(*h*) See 1 & 2 Vict. c. 77. See the notes to No. 693 *ante*, which apply as well to affirmations as to affidavits. For the case where there are two or more affirmants, see No. 695 *ante*.

(*hh*) See note (*h*) to No. 694 *ante*.

(*j*) See the notes to No. 696 *ante*. For the case where two or more affirmants make an affirmation together, see *ante* No. 698. For the case where the affirmant is blind, or deaf and dumb, or a foreigner, or a marksman, see *ante* Nos. 699 to 707.

Moravians], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm that the contents of this my affirmation are true.

A. B. { Affirmed by the said A. B., pursuant to the Act 1st & 2nd Victoria, chapter 77, at [*State where, and when, as in* No. 696 *ante*],

before me [*&c.: ante* No. 696.]

715.

Affirmation by a Separatist under 3 & 4 Will. IV. c. 82 (*k*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title of action or matter, and reference to the record; as in* No. 693 *ante*].

I, A. B., of [*residence, and description or addition*], do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare as follows:

1.
2.

Affirmed [*&c.: see post* No. 717].

716.

Foot note (*kk*).

This affirmation is filed on the part and behalf of [*Continue as in* No. 694 *ante, to end*].

717.

Declaration and affirmat thereto (*l*).

To the affirmant: Is that your name and handwriting?

To be uttered by the affirmant: I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare that the contents of this my affirmation are true.

A. B. { Affirmed and declared by the said A. B., pursuant to the Act 3rd & 4th William the IVth, chapter 82, at [*State where, and when, as in* No. 696 *ante*]:

before me [*&c.: ante* No. 696].

(*k*) See 3 & 4 Wm. IV. c. 82. See the notes to No. 693 *ante*, which apply as well to affirmations as to affidavits. For the case where there are two or more affirmants, see No. 695 *ante*.

(*kk*) See note (*h*) to No. 694 *ante*.

(*l*) See the notes to No. 696 *ante*. For the case where two or more affirmants make an affirmation together, see *ante* No. 698. For the case where the affirmant is blind, or deaf and dumb, or a foreigner, or a marksman, see *ante* Nos. 699 to 707.

718.
Affirmation under the Common Law Procedure Act, 1854 (*m*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title of cause or matter, and reference to the record; as in* No. 693 *ante*].

I, A. B., of [*residence, and description or addition*], do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare as follows:

1.
2.

Affirmed [*&c.: see post* No. 720].

719.
Foot note (*mm*).

This affirmation is filed on the part and behalf of [*Continue as in* No. 694 *ante, to end*].

720.
Declaration and affirmat thereto (*n*).

To the affirmant: Is that your name and handwriting?

To be uttered by the affirmant: I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare, that the contents of this my affirmation are true.

A. B. Affirmed by the said A. B., at [*State where, and when, as in* No. 696 *ante*], pursuant to the Act 17th & 18th Victoria, chapter 125, before me: I having been first satisfied of the sincerity of the objection made by the said A. B. to be sworn, from conscientious motives.

[*Signature and style of office: see ante* No. 696.]

721.
Formal parts of joint affidavit and affirmation (*o*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title of action or matter and reference to the record as in* No. 693 *ante.*]

I, A. B., of [*residence and description or addition*], make oath

(*m*) See 17 & 18 Vict. c. 125 (Common Law Procedure Act, 1854), s. 20. See the notes to No. 693 *ante*, which apply as well to affirmations as to affidavits. For the case where there are two or more affirmants, see No. 695 *ante*.

(*mm*) See note (*h*) to No. 694 *ante*.

(*n*) See the notes to No. 696 *ante*. For the case where two or more affirmants make an affirmation together, see *ante* No. 698. For the case where the affirmant is blind, or deaf and dumb, or a foreigner, or a marksman, see *ante* Nos. 699 to 707.

(*o*) See Nos. 693 *et seq.*, and notes thereto.

and say, and I, C. D., of [*residence and description or addition*], being one of the people called Quakers [*or as may be; see ante* Nos. 709, 712, 715, 718], do solemnly, sincerely, and truly affirm and declare [*or as may be*]:

And first I, the said A. B., for myself say as follows:

1.

2.

And I, the said C. D., for myself say as follows:

3.

4.

A. B. } Sworn by the said A. B. and affirmed by the said C. D.
C. D. } [*&c.; see the preceding forms*], at [*State where and when, as in* No. 696 *ante*].
before me [*&c.; see ante* No. 696].

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722. Foot note thereto (*p*).

This affidavit and affirmation is filed on the part and behalf of [*Continue as in* No. 694 *ante, to end*].

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723. Memorandum of identity of exhibit (*q*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D. and others.

This is the paper [*Or*, parchment] writing marked A. referred

(*p*) See note (*h*) to No. 694 *ante*.

(*q*) A document may be referred to in an affidavit either as an exhibit, thus: "produced and shown to me at the time of swearing this my affidavit, and marked with the letter A." (or, briefly, "now produced and shown to me, and marked A."); or as "hereunto annexed." In the former case, the person before whom the affidavit is sworn must inquire whether the deponent has seen the document, and is aware of the contents thereof: in the latter, the document should be annexed to the affidavit at the time it is sworn; and the affidavit cannot be filed without it. It is therefore generally more convenient *not* to refer to a document as "hereunto annexed"; Dan. Pr. 791; and if intended to be used at Chambers it must not be so referred to; Regul. 8 Aug. 1857, rule 11. Any document referred to as an exhibit must have a memorandum placed upon it, which must be signed by the person before whom the affidavit is sworn; Dan. Pr. 791. This memorandum must contain the short title of the action or matter; Regul. 8 Aug. 1857, rule 12. When the affidavit is sworn before a commissioner, he is entitled to a fee of 1*s.* for marking each exhibit; R. S. C. (Costs), Sched. When the affidavit is sworn before an officer of the Court, a fee of 1*s.* is payable for each exhibit referred to in the affidavit and required to be marked, whether annexed to the affidavit or not; Ord. as to Court Fees, Oct. 1875; Wilson, 506; the fee is payable by means of a stamp impressed upon or adhesive to the exhibit; Ord. as to Fees, April, 1876, Sched.; Wilson, 522.

to in the affidavit [*Or*, affirmation] of X. Y. (and T. Z.), sworn [*Or*, affirmed] in this action [*Or*, matter] before me [*If not by all the deponents or affirmants, add:*] by the said X. Y., this —— day of ——, 187—.

E. F., a Commissioner, &c. [*or as may be; see ante* No. 696 (*r*)].

724. Notice of filing an affidavit or affirmation (*s*).

Formal parts: see ante No. 21.

Take notice that I have this day filed an affidavit [*Or*, affirmation] of A. B. [*Or*, an affidavit of each of the following persons, namely, A. B., C. D., and E. F.].

725. Notice of intention to read an affidavit, &c., already filed (*t*).

Formal parts: see ante No. 21.

Take notice that the plaintiff [*or as may be*] intends to read on the hearing of [*State what occasion; as:*]

the petition presented by him [*or as may be*] in this action [*Or*, matter] on the —— day of ——, 187—; *Or*,

the motion to be made in this action [*Or*, matter], pursuant to the notice given by him [*or as may be*] on the —— day of ——, 187—; *Or*,

the summons taken out in this action [*Or*, matter] by him [*or as may be*], on the —— day of —— 187—; *or as may be;* the affidavit [*Or*, affirmation] of X. Y., filed in this action [*Or*, matter] on the —— day of ——, 187—.

(3.) *Taking Affidavits off the File and Expunging Scandalous Matter.*

726. Notice of motion or summons to take affidavit off the file for scandal (*u*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff [*or as may be*], that the affidavit of X. Y., filed the —— day of ——, 187—, may be taken off the file

(*r*) See *ante* No. 696, note (*p*).

(*s*) This notice is required to be given by a claimant coming in under a judgment in answer to an advertisement; Cons. Ord. XXXV. 38; it is, however, usually given in every case; Dan. Pr. 795.

(*t*) Where on the hearing of any petition, motion, or summons, it is intended to read affidavits filed before the petition, notice of motion or summons was presented, served, or issued, notice of such intention must be given to the opposite party; Dan. Pr. 794, 795, 1058, 1444.

(*u*) If an affidavit contain scandalous and irrelevant matter it may be ordered to be taken off the file, or the scandalous matter may be ordered to be expunged; Dan. Pr. 789. When an affidavit is too long and contains scandalous matter, the best course is to take it off the file; *Ormaston* v. *Association of Land Financiers*, W. N. (1878) 101. For order that an affidavit be taken off the file as scandalous, see *Kernick* v. *Kernick*, V. C. W. 22 Jan. 1864, Reg. Lib. A. 287; 12 W. R. 335; and see *Goddard* v. *Parr*, 24 L. J. Ch. 733; 3 W. R. 633, V. C. K.; *Ormaston* v. *Association of Land Financiers*, W. N. (1878) 101. As to what is scandalous matter, see Dan. Pr. 290—292; matter which is relevant is not scandalous; Dan. Pr. 290; *Blake* v. *Albion Life Assurance Co.*, 24 W. R. 677.

of this Court as being scandalous and irrelevant. And that the defendant C. D. [*or as may be*], on whose part and behalf the said affidavit was filed, may be ordered to pay the costs of and occasioned by the said affidavit, and also the costs of this application.

727. Notice of motion to strike out scandalous matter (*v*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that the paragraphs numbered —— in the affidavit of X. Y. [*Or*, that the passage commencing with the words "——" in the —— line and ending with the words "——" in the —— line of the —— paragraph of the affidavit of X. Y.], filed on the —— day of ——, 187—, may be struck out as scandalous and irrelevant. And that the defendant C. D. [*or as may be*], on whose part and behalf the said affidavit was filed, may be ordered to pay the costs of and occasioned by such scandalous and irrelevant matter, and also the costs of this application.

728. Summons to examine and expunge alleged scandalous matter in an affidavit to be used in chambers (*w*).

Formal parts: see post No. 881.

on the part of the plaintiff [*or as may be*], that the paragraphs numbered —— in the affidavit of X. Y. [*Or*, that the passage commencing with the words "——" in the —— line and ending with the words "——" in the —— line of the —— paragraph of the affidavit of X. Y.], filed on the —— day of ——, 187—, may be examined. And that the said paragraphs [*Or*, the said passage] may be expunged therefrom as scandalous and irrelevant. And that the defendant A. B. [*or as may be*], on whose part and behalf the said affidavit was filed, may be ordered to pay the costs of and occasioned by such scandalous and irrelevant matter, and also the costs of this application.

(*v*) The former mode of obtaining an order to have scandalous matter contained in a pleading or in an affidavit intended to be used before the Court, expunged, was by filing exceptions for scandal; Dan. Pr. 293 *et seq.*, 789. This practice has not been expressly abolished, but in the case of scandalous pleadings a more summary mode has been provided, viz. an application to the Court or a Judge in Chambers, or a Judge at the trial to strike out or amend the scandalous matter; R. S. C. Ord. XXVII. 1, 6; and it is conceived that in the case of affidavits intended to be used before the Court which contain scandalous matter, an application should be made by motion to expunge the matter in question. When an affidavit is too long and contains scandalous matter, the best course is to take it off the file; *Ormaston* v. *Association of Land Financiers*, W. N. (1878) 101. As to what matter is scandalous, see note (*u*) to No. 726 *ante*.

(*w*) If any party wishes to complain of any matter introduced into any affidavit before the Judge in Chambers on the ground that it is scandalous, he may take out a summons for the Judge to examine such matter, and the Judge may cause any such matter which he may deem to be scandalous to be expunged; Cons. Ord. XXXV. 60. As to what matter is scandalous, see note (*u*) to No. 726 *ante*.

729. Memorandum that scandal has been expunged (*x*).

Scandal expunged pursuant to order dated the —— day of ——, 187—.

E. F.
C. R. and W.
[*Or*, District Registrar.]

PART III.—EXAMINATION OF WITNESSES DE BENE ESSE (*y*).

730. Motion paper for leave to examine a witness *de bene esse* (*z*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*Or*, defendant A. B.], for leave to examine C. D., of [*residence and addition*], as a witness, *de bene esse*, saving all just exceptions: the said C. D. being upwards of seventy years old [*Or*, dangerously ill; *Or*, about to go abroad].

[*If a special examiner is necessary, add:*] and that E. F., of [*residence and addition*], may be appointed an examiner, to take such examination.

An affidavit in support accompanies.

(*x*) When an order has been made that scandalous matter be expunged, the officer who has the custody of the affidavit will expunge the scandalous matter accordingly, and writes a memorandum in the above form in the margin of the document opposite the expunged passages; Dan. Pr. 296. If an office copy of the document has been taken, it will be amended on being left with the officer; *Ibid.*

(*y*) It was the practice of the High Court of Chancery in certain cases to order the examination of a witness or witnesses *de bene esse*; Dan. Pr. 814 *et seq.*; and a like power has been conferred upon the High Court of Justice and the Court of Appeal by the R. S. C. Ord. XXXVII. 4, which provides that the Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct. As to the examination of witnesses *de bene esse*, see Dan. Pr. 814—822. The examination of a witness *de bene esse*, usually takes place where there is danger of losing his testimony, as where he is suffering from a dangerous illness, or is seventy years old or upwards, or is about to go abroad; or where he is the only witness to an important fact; Dan. Pr. 814; but it will be ordered in other cases where justice appears to require it; Dan. Pr. 815—817; R. S. C. Ord. XXXVII. 4.

(*z*) The application for an order to examine a witness *de bene esse*, may be made by either party and at any stage of the action; Dan. Pr. 817. Where the ground of the application is that the witness is dangerously ill, or is seventy years of age or upwards, or is about to go abroad, the order may be obtained *ex parte* on motion or on petition of course; in other cases the application

731.

Petition of course for the like (*c*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*Or*, defendant A. B.].

Showeth as follows:

1. [*State the present position of the action.*]

2. C. D., of [*residence and addition*], is a material witness in this action for your petitioner: without whose testimony your petitioner cannot safely proceed to a trial of this action.

3. The said C. D. is upwards of seventy years old [*Or*, dangerously ill; *Or*, about to go abroad]; and your petitioner is desirous to examine him *de bene esse*.

Your petitioner therefore humbly prays, that he may be at liberty to examine the said C. D. as a witness on his behalf in this action *de bene esse:* saving all just exceptions [*If so:*] and that E. F., of [*residence and addition*], may be appointed an examiner to take such examination.

And your petitioner will ever pray, &c.

732.

Notice of motion or summons for leave to examine a witness *de bene esse* (*d*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty to examine C. D., of [*residence and addition*], as a witness on his behalf in this action *de bene esse:* saving all just exceptions:

[*If a special examiner is necessary, add:*] and that E. F., of [*residence and addition*], may be appointed an examiner, to take such examination.

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must be by motion or summons upon notice; Dan. Pr. 817. In any case the application must be supported by an affidavit; Dan. Pr. 818. For form, see *post* No. 733. When the order is obtained *ex parte*, it must be served upon the opposite party; Dan. Pr. 818. For form of order on *ex parte* motion, see Seton, ed. 3, 1236, No. 2.

(*c*) See note (*z*) to No. 731 *ante*. For order, on plaintiff's petition of course before appearance, to examine a witness seventy years old *de bene esse*, on notice of the order being given to the defendants, or a copy left at their dwelling-houses or usual places of abode, ten days before the examination, see *Soffe* v. *Prince*, M. R. 26 Mar. 1870, Rolls' Lib.

(*d*) See note (*z*) to No. 731 *ante*. For order, on summons, for defendants to examine the plaintiff *de bene esse*, appointing a special examiner to take such examination in the manner prescribed by the 15 & 16 Vict. c. 86, and directing the order to be served on the plaintiff three days before the examination, see *Wilson* v. *Simpson*, V. C. M. at Chambers, 17 Dec. 1869, Reg. Lib. B. 3071.

733. Affidavit in support of motion, petition, or summons (*e*).

Formal parts: see ante No. 693.

1. C. D., of [*residence and addition*], is a material witness in this action for the plaintiff [*Or*, defendant A. B.].

2. The said C. D. is [*Show the special ground for the application; as thus:*] upwards of seventy years of age [*Or*, in a dangerous state of health; *Or*, about to go out of the jurisdiction of this honourable Court (*f*); *or as may be*].

3. [*If a special examiner is necessary, show his fitness to be appointed: see ante* No. 601.]

4. [*Show means of knowledge.*]

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734. Notice of intention to examine the witness (*g*).

Formal parts: see ante No. 21.

Take notice that the plaintiff [*Or*, defendant A. B.] intends to examine C. D., of [*Insert description of the witness*], as a witness on his behalf in this action *de bene esse*, under the order in this action, dated the —— day of ——, 187—, before E. F., esquire, one of the examiners of witnesses of this Court [*Or*, the examiner specially appointed for the purpose of taking such examination by order dated —— day of ——, 187—], at [*State where and when; as thus:*] the office of the said examiner in Rolls Yard, Chancery Lane, London, on ——day, the —— day of ——, 187—, at —— of the clock in the ——noon.

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735. Formal parts of deposition of the witness (*h*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . . Plaintiff,
and
O. P. and R. S. . . . Defendants.

Deposition of a witness examined *de bene esse*, pursuant to an

(*e*) See note (*z*) to No. 731 *ante*.

(*f*) If the application is made upon the ground that the witness is the only witness to a fact, the affidavit should state the particular points to which his evidence will apply, and should show the ground for believing that the witness is the only witness to the fact or facts in question; Dan. Pr. 818.

(*g*) Forty-eight hours' notice of the examination must be given to the other side; Ord. 5 Feb. 1861, rule 22.

(*h*) The examination takes place in the manner prescribed by the 15 & 16 Vict. c. 86; see ss. 31 to 34; Ord. 5 Feb. 1861, rule 10; Ord. 6 Mar. 1860, rule 16; note (*l*) to No. 661 *ante*; and Dan. Pr. 800, 806, 807.

order made in the above action dated the —— day of ——, 187—, at [*State where*] (*j*),

before me,

E. F., examiner [*Or*, special examiner appointed by the said order ; *Or*, by order in this action dated the —— day of ——, 187—.]

Sworn —— day of ——, 187—. } C. D., of [*residence and addition*], examined on behalf of the plaintiff [*Or*, defendant A. B.], saith as follows :

[*Continue as in* No. 661 *ante, to the end.*]

736.

Notice of motion for leave to use deposition taken *de bene esse* (*k*).

Formal parts : *see post* No. 1571.

on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty at the trial of this action to read and make use of the deposition of C. D., taken on his behalf *de bene esse*, and filed on the —— day of ——, 187—, under the order in this action dated the —— day of ——, 187—.

737.

Affidavit in support (*l*).

Formal parts : see ante No. 693.

1. [*State the position of the action, as in* No. 631 *ante.*]

2. [*Show special grounds for the application ; as thus :*] C. D., in the order in this action, dated the —— of ——, 187—, named, died on the —— day of —— last. He is the same person as C. D. named in the paper writing marked A. now produced and shown to me [*Exhibit certificate of death or burial* (*m*)], and purporting to be a copy of an entry in the Register Book of deaths [*Or*, burials] kept for [*describe the Register Book*].

3. [*Where the evidence in the action has been taken by affidavit, explain why the affidavit of the witness was not obtained in the ordinary course.*]

4. [*Show means of knowledge.*]

(*j*) See note (*m*) to No. 661 *ante.*

(*k*) Depositions taken *de bene esse*, cannot be made use of without an order ; and the ordinary course of the Court is not to allow of their use unless it is impracticable to obtain the evidence of the witness in the ordinary course ; Dan. Pr. 819—821. The application for leave to use depositions taken *de bene esse*, is by motion on notice, supported by an affidavit showing that the evidence of the witness cannot be obtained in the ordinary course, and when the evidence has been taken by affidavit, showing that the affidavit of such witness could not have been obtained ; see Dan. Pr. 821. For form of order, see *Walker* v. *Walker*, V. C. S. at Chrs. 13 Nov. 1866, Reg. Lib. B. 2393.

(*l*) See note (*k*) to No. 736 *ante.*

(*m*) For form of memorandum of exhibit, see *ante* No. 723.

CHAPTER XII.

TRIAL IN THE SUPERIOR COURT.

Section I.—Trial of the Action.

(1.) *Notice of Trial and Proceedings to settle the mode of Trial* (*a*).

(*a*) Actions may be tried either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and jury, or before an official or special referee with or without assessors; R. S. C. Ord. XXXVI. 2. In *Longman* v. *East*, 3 C. P. D. 142; 26 W. R. 183, it was said by two of the Judges that it was not intended by the R. S. C. Ord. XXXVI. 2, to give a referee power to try an action. That question, however, did not arise in that case, and see *contra*, R. S. C. Ord. XXXVI. 2, 3, 4, 30, 32; *Ibid.*, Ord. XL. 2, 3, 5; *Ibid.*, App. D. form 6. The party giving the notice of trial, that is, ordinarily, the plaintiff, but upon his default for a certain time, the defendant, must in the notice specify one of the above modes of trial; *Ibid.*, rules 3, 4. Where the mode specified in the notice is other than before a Judge and jury, the party to whom the notice is given may, by giving notice, require the issues of fact in the action to be tried before a Judge and jury; *Ibid.*, rules 3, 4; and in any case the party to whom the notice is given may apply to the Court or a Judge to have the action tried in some other mode than that specified in the notice of trial; *Ibid.*, rule 5. These rules confer upon either party to an action a right to have the action, or the issues of fact therein, tried before a jury; *Sugg* v. *Silber*, 1 Q. B. D. 362; except in the following cases: (1). Causes which, previously to the passing of the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), might without any consent of parties have been tried without a jury; in such cases, the Court or a Judge may direct a trial without a jury, of any question or issue of fact, or partly of fact and partly of law; R. S. C. Ord. XXXVI. 26. This rule was framed expressly to meet those cases, which, under the old practice, would have been tried in the Court of Chancery without a jury, and which for any reason are not capable of being conveniently disposed of by a jury; *Clarke* v. *Cookson*, 2 Ch. D. 746; *Swindell* v. *Birmingham Syndicate*, 3 Ch. D. 127; *West* v. *White*, 4 Ch. D. 631; *Bordier* v. *Burrell*, 5 Ch. D. 512. Even in cases which, under the old practice, might, without any consent of parties, have been tried without a jury, the Court will not, if any party desires to have the case tried by a jury, withdraw the case from a jury, unless there appears to be some reason for doing so; in a simple case which may conveniently be tried by a jury, the ordinary right of a party under rules 3, 4, will not be interfered with; *Clarke* v. *Cookson*, *ubi supra*; *Garling* v. *Royds*, 25 W. R. 123; *West* v. *White*, *ubi supra*; *Bordier* v. *Burrell*, *ubi supra*; *Clements* v. *Norris*, 26 W. R. 94. In the following cases which might, under the old practice,

738. Summons to extend time for giving notice of trial (*b*).

Formal parts: see post No. 881.

on the part of the plaintiff, that he may have —— days' further

have been tried without a jury, without any consent of parties, the Court refused to withdraw the case from a jury; *Clarke* v. *Cookson, ubi supra; West* v. *White, ubi supra; Bordier* v. *Burrell, ubi supra; Clements* v. *Norris, ubi supra;* but in the following cases the Court exercised the power conferred upon it by rule 26 of Ord. XXXVI.; *Swindell* v. *Birmingham Syndicate, ubi supra; Garling* v. *Royds, ubi supra; Back* v. *Hay*, 5 Ch. D. 235; *Pilley* v. *Baylis*, 5 Ch. D. 241. The exercise of the power conferred by rule 26 is discretionary with the Judge, and, when he has exercised his discretion, no appeal lies; *Swindell* v. *Birmingham Syndicate, ubi supra; West* v. *White, ubi supra;* except in extreme cases; *Davy* v. *Garrett*, 7 Ch. D. 473. (2). Causes which require a prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or Judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers; in such cases the Court or a Judge may order any question or issue of fact, or any question of account, to be tried before an official referee, or before a special referee; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57; see *Longman* v. *East*, 26 W. R. 183 (C. A.). The Court will not, however, order a trial before a referee unless that be a better mode of trial than any other; *Rowcliffe* v. *Leigh*, 3 Ch. D. 292; and a question of fraud affecting the character of the party, ought not, against his will, to be tried otherwise than in open Court; *Leigh* v. *Brooks*, 5 Ch. D. 592. A claim in an administration suit consisting of twenty-four items, was ordered to be tried before an official referee under this section; *Rowcliffe* v. *Leigh, ubi supra;* but it was held that there was no jurisdiction under this section to order an action to set aside for fraud the sale of 130 pictures, to be tried before a referee: *Leigh* v. *Brooks, ubi supra.* (3). Causes in which the matter in dispute consists wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way; in such cases the Court or Judge may decide the matter in a summary manner, or may order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 3. The provisions of this act are not affected by those of the Sup. Cot. Jud. Acts; *Cruickshank* v. *Floating Baths Co.*, 1 C. P. D. 260; *Longman* v. *East*, 3 C. P. D. 142; *per Brett*, L. J., at pp. 152, 153. In other cases than the above, either party has a right to have the action, or the issues of fact therein, tried by a jury; *Sagg* v. *Silber*, 1 Q. B. D. 362. Where the notice of trial specifies a mode of trial other than before a jury, and no party gives notice requiring the issues of fact to be tried before a jury, the Court or a Judge has power to alter the mode specified in the notice of trial; R. S. C. Ord. XXXVI. 5.

(*b*) The plaintiff may give notice of trial of the action with his reply, or at any time after the close of the pleadings; R. S. C. Ord. XXXVI. 3. Where under R. S. C. Ord. XXXVIII. the evidence is, by consent, taken by affidavit, the notice of trial should be given after the close of the evidence; R. S. C. Ord. XXXVIII. 6. If the plaintiff does not give notice of trial within six weeks after the close of the pleadings, or, where the evidence in the action is under R. S. C. Ord. XXXVIII. taken by affidavit, within six weeks after the close of the evidence, or within such extended time as the Court or a Judge

time to give notice of trial of this action. And that the costs of this application may be costs in the action (*c*).

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739. Notice of motion or summons to dismiss for want of prosecution for not giving notice of trial (*d*).

Formal parts: see post No. 1571 *or* No. 881.
on the part of the defendant C. D., that this action may stand dismissed
[*If there are other defendants, add:*] as against the said defendant
for want of prosecution; with costs to be paid by the plaintiff to the said defendant.

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740. Notice of trial of action (*e*).

187—. B. No. .
In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.
Take notice of trial of this action [*here state the mode of trial proposed; as thus:*]

may allow, the defendant may, before notice of trial given by the plaintiff, give notice of trial; or, instead of giving notice of trial, he may apply to the Court or a Judge to dismiss the action for want of prosecution; R. S. C. Ord. XXXVI. 4, 4*a* (R. S. C. June, 1876, rule 13); R. S. C. Ord. XXXVIII. 6.

(*c*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; note (*d*) to No. 402 *ante*.

(*d*) If the plaintiff does not give notice of trial within the time limited by R. S. C. Ord. XXXVI. 4, or Ord. XXXVIII. 6 (see note (*b*) to No. 738 *ante*), the defendant, instead of giving notice of trial, may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application the Court or Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms as to the Court or Judge may seem just; R. S. C. Ord. XXXVI. 4*a* (R. S. C. June, 1876, rule 13). An application to dismiss under this rule should generally be made at Chambers; *Freason* v. *Loe*, 26 W. R. 138. The practice on the hearing of the application is to give the plaintiff a short further time upon payment of the costs of the application; *Higginbotham* v. *Aynsley*, 3 Ch. D. 288; *Freason* v. *Loe*, 26 W. R. 138. The effect of an order dismissing an action unless notice of trial be given within a limited time, is that, at the expiration of the time limited, unless the notice has been given, the action is at an end, and an order giving further time to give the notice is *ultra vires*; *Whistler* v. *Hancock*, 3 Q. B. D. 83.

(*e*) The plaintiff may give notice of trial with his reply, or at any time after the close of the pleadings; R. S. C. Ord. XXXVI. 3; if he does not do so within the time limited by R. S. C. Ord. XXXVI. 4, or Ord. XXXVIII. 6 (see note (*b*) to No. 738 *ante*), the defendant may give notice of trial; R. S. C. Ord. XXXVI. rule 4. For form of notice of trial, see R. S. C. Ord. XXXVI. 8;

before a Judge (*ee*) ; *Or*,
before a Judge sitting with assessors (*f*) ; *Or*,
before a Judge and jury in Middlesex [*Or*, in London ; *Or*, at the assizes to be holden in and for the county of ——](*g*) ; *Or*, before the Official Referee in rotation (*h*) ; *Or*,
before a Special Referee to be appointed in this action (*j*) ; *Or*,

App. (B), No. 14. It must specify the mode in which the action is proposed to be tried ; R. S. C. Ord. XXXVI. 3, 4 ; and must state whether it is for the trial of the action or of the issues therein ; *Ibid.*, rule 8. Ten days' notice of trial must be given, unless the party to whom it is given has consented to take short notice ; and such notice will be sufficient in all cases, unless otherwise ordered by the Court or a Judge ; short notice of trial is four days' notice ; *Ibid.*, rule 9. The notice of trial must be given before entering the action for trial ; *Ibid.*, rule 10. Except in actions to be tried at the assizes, the action must be entered for trial within six days after the notice of trial is given, otherwise the notice will be no longer in force ; *Ibid.*, rule 10*a* (R. S. C. Dec. 1875, rule 13). Notice of trial for the sittings to be held in London or Middlesex under the Sup. Cot. Jud. Act, 1873, s. 30, will not be or operate as for any particular sittings, but for any day after the expiration of the notice on which the action may come on for trial in its order upon the list, which is prepared without reference to the division of the Court to which the actions entered are attached ; *Ibid.*, rules 11, 16. Notice of trial at the assizes will be for the first day of the then next assizes at the place for which notice of trial is given ; *Ibid.*, rule 12. As to the place of trial, see R. S. C. Ord. XXXVI. 1, and note (*r*) to No. 748 *post*. As to any party who has appeared, the notice may be served by being left at the address for service of him or his solicitor ; R. S. C. Ord. XIX. 6 ; Cons. Ord. III. 2, 5. As to any defendant who has not appeared, the notice may be served by being filed with the Record and Writ Clerk or with the district registrar ; R. S. C. Ord. XIX. 6, 29 ; see *Dymond* v. *Croft*, 3 Ch. D. 512 ; *Morton* v. *Miller*, 3 Ch. D. 516. If a party served with notice of trial does not appear at the trial, the party serving it must be ready to prove such service, either by means of an affidavit of service, or of the certificate of the officer with whom the notice has been filed. For form of affidavit, see *post* No. 741.

(*ee*) Notice of trial "before a Judge" is sufficient, without naming the Judge ; *Harris* v. *Gamble*, 7 Ch. D. 877.

(*f*) As to trial with assessors, see the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 56, and *post* No. 744, and note (*m*) thereto.

(*g*) As to the right of a party to have the action or the issues of fact therein tried by a jury, see note (*a*) at p. 409. When the action is to be tried by a jury, the trial cannot take place in the Chancery Division, but must take place at the sittings in London or Middlesex, held under the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 30, or at the assizes held under s. 29 ; *Clarke* v. *Cookson*, 2 Ch. D. 746 ; *Warner* v. *Murdoch*, 4 Ch. D. 750.

(*h*) As to giving notice of trial of the action before a referee, see *Longman* v. *East*, 3 C. P. D. 142, at pp. 156, 157, 161 ; 26 W. R. 183, at pp. 185, 187 ; and note (*a*) at p. 409 *supra*. As to the distribution of business among the official referees, see R. S. C. Ord. XXXVI. rules 29*a*, 29*b*, 29*c* (R. S. C. June, 1876, rules 14, 15, 16), and *post*, note (*g*) to No. 762.

(*j*) As to giving notice of trial before a referee, see note (*h*) *supra*. As to the appointment of a special referee, see *post* No. 743, and note (*l*) thereto.

before the Official Referee in rotation [*Or*, a Special Referee to be appointed in this action] sitting with assessors (*k*) ;
for the —— day of ——. 187—.
Dated this —— day of ——, 187—.
X. Y., Solicitor for the Plaintiff [*Or*, Defendant].
To Mr. P. Q., Solicitor for the Defendant
[*Or*, Plaintiff].

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741. Affidavit of service of notice of trial (*hh*).

Formal parts : *see ante* No. 693.

1. On ——day, the —— day of ——, 187—, before seven of the clock in the evening [*Or*, before two of the clock in the afternoon] of the same day, I served [*Here describe the person or persons served, as thus :*]

C. D., the defendant in this action ; *Or*,

Mr. P. Q., who acts as solicitor [*Or*, agent] in this action for the defendant C. D. ; *Or*,

each of the following persons, that is to say : (1) C. D., one of the defendants in this action ; (2) Mr. R. S., who acts as solicitor in this action for the defendant E. F. ; and (3) Mr. T. U., who acts as agent in this action for the defendant G. H.; [*or as may be ;*]

with a notice in writing intituled in this action, addressed to the said [*State whom*], and purporting that [*Recite the body of the notice*], by delivering a true copy of the said notice to and leaving the same with [*Describe the person or persons on whom, and where service was effected ; as thus :*]

the said C. D. [*Or*, the said Mr. P. Q.] personally at [*State where*], in the (county) of —— ; *Or*,

a clerk [*Or*, servant ; *or as may be*] of the said C. D. [*Or*, of the said Mr. P. Q.], at his address for service, situate at [*State where*], in the (county) of —— ; *Or*,

each of the following persons, that is to say : (1) the wife [*Or*, servant ; *or as may be*] of the said C. D., at his address for service, situate at [*State where*] ; (2) the said Mr. R. S. personally, at [*State where*] ; and (3) a clerk [*Or*, servant ; *or as may be*] of the said Mr. T. U., at his address for service, situate at [*State where*].

(*k*) See note (*f*) *supra*.

(*hh*) See note (*e*) to No. 740 *ante* ; Cons. Ord. XXVIII. 8 ; *Cockshott* v. *London General Cab Co.*, 26 W. R. 31. The affidavit must, in the event of the party served making default, be produced in Court when the action comes on for trial, or at the latest before the rising of the Court on the same day ; *Miltown* v. *Stewart*, 8 Sim. 34 ; and see *Cockshott* v. *London General Cab Co.*, 26 W. R. 31.

742.

Affidavit of having been served with notice of trial (*jj*).

Formal parts: see ante No. 693.

I, P. Q., of [*place of business*], gentleman, the solicitor

Or, I, R. S., of [*residence*], clerk to P. Q., of [*place of business*], gentleman, the solicitor

in this action for the defendant C. D. [*or as may be*], make oath and say as follows:

1. On the —— day of ——, 187—, I, as such solicitor as aforesaid,

Or, I, as such clerk as aforesaid [*or as may be*]

was duly served [*State where; as thus:*] at my address for service,

Or, at the address for service of the said P. Q.,

situate at, *&c.*, by [*State whom; as thus:*] Mr. X. Y.,

Or, a clerk of Mr. X. Y.,

who acts as solicitor in this action for the plaintiff, with the paper writing intituled in this action now produced and shown to me, and marked A. (*kk*), and purporting to be [*Describe it shortly; as thus:*] a notice of trial of this action on behalf of the said plaintiff [*or as may be*] addressed to [*State whom*].

743.

Notice of motion for appointment of special referee (*l*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that Mr. ——, of [*address and description*], may be appointed Special Referee, before whom the trial of this action may take place. And that the remuneration of the said Mr. ——, as such Special Referee, may be fixed at —— guineas a day.

(*jj*) Where notice of trial is served by a party who does not appear at the trial, the Court will require the party served to prove such service, before it will proceed under R. S. C. Ord. XXXVI. 18, 19; *Cockle* v. *Joyce*, 7 Ch. D. 56; but this case was not followed in *James* v. *Crow*, 7 Ch. D. 410, where, on the plaintiff failing to appear, judgment was given for the defendant without any proof of the service of the notice of trial; and see *Ex parte Lows*, *Re Lows*, 7 Ch. D. 160.

(*kk*) Exhibit the notice of trial; for form of memorandum of exhibit, see *ante* No. 723. Instead of exhibiting the notice, its contents may be described as in No. 741 *ante*.

(*l*) A special referee appointed under s. 57 of the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66) for the trial of a question or issue of fact, or of a question of account, can only be appointed by consent; and *quære*, if a special referee can be appointed to try the action except by consent; and *quære*, if an action can be tried before a special referee; *Longman* v. *East*, 3 C. P. D. 142, at pp. 156, 157, 161; 26 W. R. 183, at pp. 185, 187; note (*a*) at p. 409 *supra*. A special referee appointed by consent has the same powers and duties, and proceeds in the same manner as an official referee; s. 57. The remuneration (if any) to be paid to a special referee must be determined by the Court; s. 56 of the Sup. Cot. Jud. Act, 1873. In *Wallis* v. *Lichfield*, W.N. (1876), 130, the remuneration of the special referee (a Queen's counsel) was fixed at five guineas a sitting.

744.
Notice of motion for appointment of assessors (*m*).

Formal parts: see post No. 1571.
on the part of the plaintiff [*or as may be*], that Mr. ——, of [*address and description*], and Mr. ——, of [*address and description*], may be appointed assessors, with whose assistance the Court [*Or*, the Referee] may try and hear this action. And that the remuneration of each of the said assessors may be fixed at —— guineas a day.

745.
Summons for further time to serve notice under Ord. XXXVI. rr. 3, 4 (*n*).

Formal parts: see post No. 881.
on the part of the defendant [*Or*, of the plaintiff], that he may have —— days' further time to give notice of his desire to have the issues of fact in this action tried before a judge and jury. And that the costs of this application may be costs in the action (*o*).

746.
Notice to have issues of fact tried before a judge and jury (*p*).

Formal parts: see ante No. 21.
Take notice that the defendant [*Or*, the plaintiff] desires to have the issues of fact in this action tried before a Judge and jury.

(*m*) By the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 56, the High Court of Justice or the Court of Appeal may, in any cause or matter (other than a criminal proceeding by the Crown), in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such assessors, is to be determined by the Court. By the R. S. C. Ord. XXXVI. 2, actions may be tried and heard before a Judge sitting with assessors, or before an official or special referee with assessors. Trials with assessors take place in such manner and on such terms as the Court or a Judge directs; R. S. C. Ord. XXXVI. 28.

(*n*) A notice by a party to whom notice of trial other than before a Judge and jury is given, of his desire to have the issues of fact in the action tried before a Judge and jury, must be given within four days from the time of service of the notice of trial, or within such extended time as the Court or a Judge may allow; R. S. C. Ord. XXXVI. 3, 4.

(*o*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; note (*d*) to No. 402 *ante*.

(*p*) A party to whom notice of trial other than before a Judge and jury is given, by giving notice of his desire to have the issues of fact in the action tried before a Judge and jury, becomes entitled to have the same so tried; R. S. C. Ord. XXXVI. 3, 4; but his right to a trial by jury is subject in certain cases to the power of the Court to direct a trial otherwise; see R. S. C. Ord. XXXVI. 26; Sup. Cot. Jud. Act, 1873, s. 57; C. L. P. Act,

747.

Notice of motion to have issues of fact tried without a jury or before a referee, notwithstanding the notice (*q*).

Formal parts : see post No. 1571.

on the part of the plaintiff [*or as may be*], that, notwithstanding the notice given in this action on the —— day of ——, 187—, by the defendant [*or as may be*] of his desire to have the issues of fact in this action tried before a Judge and jury, the issues of fact in this action may be tried before a Judge without a jury at the same time with the trial of this action.

748.

Notice of motion or summons to change place of trial (*r*).

Formal parts : see post No. 1571 *or* No. 881.

on the part of the defendant [*or as may be*], that this action may be tried at [*state where ; as :*] the assizes to be holden in and for the county of ——.

1854, s. 3 ; and *supra*, note (*a*) at pp. 409, 410. Where the notice is given and the Court does not interfere, the trial by jury will not take place in the Chancery Division, but at the sittings in Middlesex or in London held under the Sup. Cot. Jud. Act, 1873, s. 30, or at the assizes held under s. 29 of the same act ; *Clarke* v. *Cookson*, 2 Ch. D. 746 ; *Warner* v. *Murdoch*, 4 Ch. D. 750. To such a case the R. S. C. Ord. XXXVI. 29*d* (R. S. C. Dec. 1876, rule 4) has no application ; *Hunt* v. *City of London Real Property Co., Limited*, 3 Q. B. D. 19 ; *per* Bramwell, L. J., in *Warner* v. *Murdoch*, 4 Ch. D. 750.

(*q*) As to the power of the Court or Judge to direct a trial without a jury of any question or issue of fact, or partly of law and partly of fact, arising in any cause or matter which, under the old practice could without any consent of parties have been tried without a jury, see R. S. C. Ord. XXXVI. 26, and note (*a*) at p. 409 *supra*. As to the power of the Court or a Judge to direct a trial before an official or special referee, of any question or issue of fact, or any question of account arising in any cause or matter requiring a prolonged examination of documents or accounts, or any scientific or local investigation which cannot conveniently be made before a jury or conducted by the Court through its other ordinary officers, see the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57, and note (*a*) at p. 410 *supra*.

(*r*) Where the plaintiff proposes to have the action tried elsewhere than in Middlesex, he must in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action will, unless a Judge otherwise orders, be tried in the county or place so named ; where no place of trial is named in the statement of claim, the place of trial will, unless a Judge otherwise orders, be the county of Middlesex ; R. S. C. Ord. XXXVI. 1. Where an action is ordered to be tried at the sittings in London or Middlesex or at the assizes, the order directing such trial must state on its face the reason for which it is expedient that the action should be so tried, and should not be tried in the Chancery Division ; R. S. C. Ord. XXXVI. 29*d* (R. S. C. Dec. 1876, rule 4) ; as to this rule, see *Warner* v. *Murdoch*, 4 Ch. D. 750, *per* Bramwell, L. J. ; *West* v. *White*, 4 Ch. D. 631 ; *Wood* v. *Hamblet*, 6 Ch. D. 113 ; *Hunt* v. *City of London Real Property Co., Limited*, 3 Q. B. D. 19 ; note (*d*) to No. 789 *post*.

749. Summons to enlarge time for applying to alter mode of trial (*s*).

Formal parts: see post No. 881.
on the part of the defendant [*or as may be*], that the time limited for the applicant to apply to the Court or a Judge to have this action tried in some other mode than that specified in the notice of trial of this action, may be enlarged to the —— day of ——, 187—. And that the costs of this application may be costs in the action (*t*).

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750. Notice of motion or summons to vary mode of trial specified in notice (*u*).

Formal parts: see post No. 1571 *or* No. 881.
on the part of the defendant [*or as may be*], that, notwithstanding the notice of trial of this action dated the —— day of ——, 187—, this action may be tried before [*State mode of trial proposed; see* No. 740 *ante*]. And that the costs of this application may be costs in the action.

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751. Notice of motion or summons for separate trials of distinct causes of action (*v*).

Formal parts: see post No. 1571 *or* No. 881.
on the part of the defendant, that separate trials may be had of the several causes of action united by the plaintiff in this action, that is to say, a separate trial of the plaintiff's claim for or in respect of ——, and a separate trial of the plaintiff's claim for or in respect of ——. And that the plaintiff may be ordered to prepare separate records for use on such trials, and to deliver to the defendant's solicitor a copy of each record —— days previously to the trial of the claim to which such record relates. And that such records may be settled by the Judge in case the parties differ about the same. Or that such other order may be made for the separate disposal of the said causes of action as may be necessary or expedient.

(*s*) An application to the Court or a Judge to vary the mode of trial stated in the notice of trial, must be made within four days from the time of service of the notice of trial, or within such extended time as the Court or Judge may allow; R. S. C. Ord. XXXVI. 5; *Lascelles* v. *Butt*, 2 Ch. D. 588.

(*t*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; and see note (*d*) to No. 402 *ante*.

(*u*) If a party to whom notice of trial is given desires to have the action tried in some other mode than that specified in the notice of trial, he must (except where he desires to have the issues of fact tried before a Judge and jury, in which case he may give notice to that effect, see *ante* No. 746) apply to the Court or a Judge for an order to that effect; R. S. C. Ord. XXXVI. 5. As to the time within which the application must be made, see note (*s*) to No. 749 *ante*. A party who has given notice of trial cannot afterwards apply to change the mode specified in his own notice; *Lascelles* v. *Butt*, 2 Ch. D. 588. If the application is that the trial may take place before assessors, or before a special referee, it should go on to ask for the appointment of assessors or of a special referee, and to fix their remuneration; see *ante* Nos. 743 and 744.

(*v*) If the plaintiff has united in the same action several causes of action,

752.

Consent to notice of trial being countermanded (*w*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

We, the undersigned solicitors for the defendants in this action, hereby consent to the plaintiff countermanding his notice of trial of this action dated the —— day of ——, 187—.

Dated —— day of ——, 187—.

P. Q., solicitor for defendant, C. D.
R. S., solicitor for all the other defendants.

753.

Summons for liberty to countermand notice of trial (*w*).

Formal parts: see post No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to countermand the notice of trial of this action given by him on the —— day of ——, 187—.

754.

Notice of countermand (*w*).

Formal parts, see ante No. 21.

Take notice that, by consent [*Or*, by virtue of the order dated —— day of ——, 187—], I hereby countermand the notice of trial of this action, given by me on the —— day of ——, 187—.

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and it appears to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof; R. S. C. Ord. XVII. 1.

(*w*) Notice of trial may not be countermanded except by consent or by leave of the Court or a Judge; R. S. C. Ord. XXXVI. 13. Where the action has already been entered for trial, the consent or the application for leave to countermand should provide for the withdrawal of the action; see *post* Nos. 763 and 764.

(2.) *Entering the action for Trial* (*a*).

755. *Præcipe* on entering action for trial (*aa*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge.*]

Between A. B. . . . . Plaintiff,

and

C. D. . . . . Defendant.

(*a*) The action cannot be entered for trial until after notice of trial is given; R. S. C. Ord. XXXVI. 10; but it must be entered for trial within six days after notice of trial is given, except where the trial is to take place at the assizes; otherwise the notice of trial will no longer be in force; *Ibid.*, rule 10*a* (R. S. C. Dec. 1875, rule 13). Where the action is to be tried at the assizes, either party may enter the action for trial, and if both parties enter the action, it will be tried in the order of the plaintiff's entry; R. S. C. Ord. XXXVI. 15. Where the trial is to take place elsewhere than at the assizes, it may be entered for trial by the party giving the notice of trial; if he omits to enter the action for trial on the day or the day after giving notice of trial, the party to whom the notice is given may, within four days, enter the action for trial; *Ibid.*, rule 14. Where the action is to be tried before a Judge in the Chancery Division, it is entered for trial with the Registrar; where it is to be tried at the sittings held in Middlesex or London, or at the assizes, it is entered for trial with the associate; Registrars' Notice, Feb. 1877; W. N. (1877) Part II., p. 162. Wherever an action is to be tried before a Judge and jury, it must be tried at the sittings in Middlesex or London, or at the assizes, and must be entered for trial with the associate accordingly, as no trial by jury can take place in the Chancery Division; *Clarke* v. *Cookson*, 2 Ch. D. 746; *Warner* v. *Murdoch*, 4 Ch. D. 750. The list or lists of actions for trial at the sittings in London and Middlesex respectively are prepared, and the actions are allotted for trial, without reference to the division of the Court to which such actions are attached; R. S. C. Ord. XXXVI. 16. Where the action is to be tried before an official referee (as to which, see note (*h*) to No. 740), it will be so tried before the official referee in rotation; R. S. C. Ord. XXXVI. 29*a* (R. S. C. June, 1876, rule 14); note (*g*) to No. 762 *post*; but the Court has power to direct the trial to take place before any one in particular of the said official referees; R. S. C. Ord. XXXVI. 29*c* (R. S. C. June, 1876, rule 16); in either case the action is entered for trial with the clerk of the referee. An action in the Chancery Division proceeding in a district registry, is entered for trial with the district registrar; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 64; R. S. C. Ord. XXXV. 1 (R. S. C. June, 1876, rule 12). The action is entered for trial by delivery to the proper officer of a copy of the notice of trial, and of two copies of the whole of the pleadings in the action; R. S. C. Ord. XXXVI. 17 (R. S. C. Dec. 1875, rule 14). Upon entering the action for trial, a fee is payable of £1 on the lower scale, and £2 on the higher scale; Ord. as to Court Fees, Oct. 1875, Sched.; Wilson, 506; where the action is entered for trial with the associate, this fee is payable by means of a stamp impressed upon or adhesive to a copy of the pleadings; in other cases it is payable by means of a stamp impressed upon the *præcipe*; Ord. as to Fees, April, 1876, Sched.; Wilson, 522.

(*aa*) As to the officer with whom the action is entered for trial, and generally as to the entry of the action for trial, see note (*a*) *supra*.

Enter this action for trial.

Dated —— day of ——, 187—.

X. Y.,

Solicitor for the plaintiff [*Or*, defendant].

756.

Memorandum to be indorsed on *præcipe* (*b*).

A guardian *ad litem* has been appointed to the infant defendant E. F. [*Or*, There is not any infant defendant].

Dated —— day of ——, 187—.

X. Y.,

Solicitor for the plaintiff [*Or*, defendant].

757.

Certificate that witnesses are to be examined before the Court (*c*).

I hereby certify that witnesses are to be examined [*Or*, cross-examined] before the Court on the trial of this action.

Dated —— day of ——, 187—.

X. Y.,

Plaintiff's [*Or*, Defendant's] solicitor.

758.

Certificate of counsel that action is fit to be heard "short" (*d*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

I certify that this action is fit to be heard as a short action.

Dated —— day of ——, 187—.

X. Y.,

Counsel for the plaintiff [*Or*, defendant].

(*b*) See Registrar's Regulations, March 1860, rule 7; this applies only where the action is entered for trial in the Chancery Division.

(*c*) This certificate is necessary only where the action is entered for trial before a Judge of the Chancery Division. In the Chancery Division certain days of the week are usually appointed for the trial of actions in which witnesses are to be examined before the Court.

(*d*) An action may without consent be marked "short" on production of the certificate of counsel for the party setting down the action that it is fit to be so heard. It will then be placed in the paper for trial on the first short cause day after the day for which notice of trial is given. This practice obtains only in the Chancery Division. If any party shows any fair cause why the action should not be heard "short," it will go into the general list; *Felstead* v. *Gray*, L. R. 18 Eq. 92. An action will not be heard as "short" unless the evidence has been taken by affidavit; and counsel ought not to certify that an action is proper to be heard as "short" unless the evidence has been so taken; *Anon.*, W. N. (1875) 193.

759. Notice that action has been marked "short" (*e*).

Formal parts: see ante No. 21.

Take notice that this action has been marked for hearing as a short action in the Registrar's Book of Actions standing for trial.

Dated —— day of ——, 187—.

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760. Certificate of notice having been given under Ord. XXXVI. 3, 4 (*f*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

I certify that the defendant [*Or*, plaintiff] in this action has duly given notice, under the Rules of the Supreme Court, Ord. XXXVI., rule 3 [*Or*, 4], of his desire to have the issues of fact in this action tried before a Judge and jury.

Dated —— day of ——, 187—.

X. Y.,
Solicitor for plaintiff [*Or*, defendant].

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761. Registrar's certificate that action has been marked for trial by jury (*f*).

Formal parts, as in No. 760 *ante.*

I certify that this action was entered for trial in the Cause Book of the Chancery Division, on the —— day of ——, 187— ; and that it has this day been marked "Jury trial at defendant's [*Or*, plaintiff's] instance," in accordance with notice given by the defendant [*Or*, plaintiff], under the Rules of the Supreme Court, Ord. XXXVI., rule 3 [*Or*, 4].

Dated —— day of ——, 187—.

X. Y.,
Registrar.

(*e*) If the defendant does not appear at the trial, an affidavit of service of this notice is required; for form, see *ante* No. 741. If any defendant has not appeared, the notice may be served on him by being filed with the Record and Writ Clerk, or the district registrar; R. S. C. Ord. XIX. 6, 29; see *Dymond* v. *Croft*, 3 Ch. D. 512. The filing of the notice may then be proved by production of the certificate of the officer with whom it was filed.

(*f*) Where notice of trial before a judge is given, and the action is set down for trial in the Chancery Division accordingly, and the party to whom notice of trial is given gives notice of his desire, under R. S. C. Ord. XXXVI. 3, 4, to have the issues of fact in the action tried before a Judge and jury, the action will, on the certificate of the solicitor for either party of such notice having been duly given, be marked in the Chancery Cause-Book, "Jury trial at defendant's (or, plaintiff's) instance," and the associate will enter the action for the trial of such issues of fact on production of the Registrar's certificate; Registrar's notice of February, 1877; W. N. (1877), Part II. p. 162.

762.

Note of name of official referee in rotation (*g*).

Mr. A. is the official referee in rotation, before whom this action is to be tried.

Dated —— day of ——, 187—.

X. Y. [*Signature of Registrar's clerk*].

763.

Consent to withdrawal of action entered for trial (*h*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

We consent that this action, which has been entered for trial, be withdrawn, and be struck out of the list of actions standing for trial accordingly.

Dated —— day of ——, 187—.

O. P., solicitor for plaintiff,
Q. R., solicitor for defendant C. D.,
S. T., solicitor for all the other defendants.

764.

Notice of motion or summons for leave to withdraw action entered for trial (*j*).

Formal parts: see post No. 1571 *or* 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to withdraw this action, which has been entered for trial; and that this action may be struck out of the list of actions standing for trial accordingly.

(*g*) The business of the official referees is to be distributed among them in rotation by the clerks to the Registrars of the Chancery Division of the High Court in like manner as the business referred to conveyancing counsel appointed under 15 & 16 Vict. c. 80, s. 41, is directed to be distributed by the Cons. Ord. II. rules 1, 2; R. S. C. Ord. XXXVI. 29*a* (R. S. C. June, 1876, rule 14). When notice of trial before an official referee has been given (as to which, see note (*h*) to No. 740 *ante*), a copy of the notice of trial must be produced to the Registrar's clerk, whose duty it is to make the distribution (viz., the first clerk, or, in his absence, the second clerk to the Chancery Registrars, or, in the absence of both such clerks, such clerk as the senior Chancery Registrar shall nominate; Cons. Ord. II. 1), and such clerk will indorse thereon a note specifying the name of the official referee in rotation before whom the action is to be tried; and the notice of trial so indorsed must be left with the clerk to the official referee when the action is entered for trial; see R. S. C. Ord. XXXVI. 29*a*, 29*b* (R. S. C. June 1876, rules 14, 15). When issues are ordered to be tried before an official referee, the note is indorsed on the order; *Ibid.*, and note (*e*) to No. 789 *post*.

(*h*) When a cause has been entered for trial it may be withdrawn by either plaintiff or defendant upon producing to the proper officer a consent in writing signed by the parties; R. S. C. Ord. XXIII. 2 (R. S. C. Dec. 1875, rule 9).

(*j*) It is not competent to the plaintiff to withdraw the record without leave of the Court or a Judge; R. S. C. Ord. XXIII. 1; unless by consent; R. S. C. Ord. XXIII., 2 (R. S. C. Dec. 1875, r. 9).

765. Certificate that action compromised (*k*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

I certify that this action which now stands in the Registrar's Book of Actions for trial before the Master of the Rolls [*or as may be*] is compromised.

Dated this —— day of ——, 187—.

X. Y.,
Plaintiff's solicitor.

To the Registrars of the Chancery Division
of the High Court of Justice.

(3.) *Obtaining a Special Jury.*

766. Notice of intention to have action tried by a special jury (*l*).

Formal parts : see ante No. 21.

Take notice that it is the intention of the above-named plaintiff [*Or*, defendant] to have this action tried by a special jury.

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767. Notice of motion or summons that action may be tried by a special jury (*m*).

Formal parts : see post No. 1571 *or* No. 881.

on the part of the plaintiff [*Or*, of the defendant], that this action may be tried by a special jury.

(*k*) Cons. Ord. XXI. 7 ; Dan. Pr. 840.

(*l*) Either party is entitled, upon giving notice, to have the action tried by a special jury ; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 109 ; Jury Act, 1870 (33 & 34 Vict. c. 77), s. 18. The plaintiff must give the same notice as is necessary for a notice of trial ; 15 & 16 Vict. c. 76, s. 109 ; *i.e.*, ten days' notice, unless the defendant has consented to take short notice of trial, and then four days' notice ; R. S. C. Ord. XXXVI. 9. The defendant must give his notice more than six days' before the day for which notice of trial is given ; 15 & 16 Vict. c. 76, s. 109 ; Reg. Gen. H. T. 1853, rule 44. The party giving the notice must bear the expenses of the special jury, and will not, though successful, be entitled to recover them from the opposite party, unless the judge before whom the action is tried certifies at the trial that the action was proper to be tried by a special jury ; 6 Geo. 4, c. 50, s. 34.

(*m*) The Court or a Judge may at any time order that a cause be tried by a special jury, upon such terms as they or he shall think fit ; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 109.

768.

Notice to sheriff that action to be tried by a special jury (*n*).

Formal parts : see ante No. 21.

Take notice that this action which is to be tried at the next assizes, to be holden in and for the county of —— [*or as may be*], is to be so tried by a special jury.

769.

Notice of motion or summons that action may be tried by a common jury notwithstanding notice (*o*).

Formal parts : see post No. 1571 *or* No. 881.

on the part of the plaintiff, that notwithstanding the notice given by the defendant of his intention to have this action tried by a special jury, this action may be tried by a common jury.

(4.) *Obtaining a view by the Jury.*

770.

Summons for a view (*p*).

Formal parts : see post No. 881.

on the part of the plaintiff [*or as may be*], that a view may be had of the place in question by the special [*Or*, common] jury summoned and impanelled by the Sheriff of Middlesex [*or as may be*] for the trial of this action, and that such view may be made on ——, the —— day of ——, 187—, at —— o'clock in the —— noon, at [*State where*] : which place is distant —— miles from the office of the Under-sheriff of Middlesex [*or as may be*].

(*n*) Where an action is to be tried by a special jury, notice must be given to the sheriff six days before the day for which notice of trial is given, otherwise no special jury need be summoned or attend, and the action may be tried by a common jury in like manner as if no proceedings had been had to try the action by a special jury ; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), ss. 112, 113.

(*o*) Where the action is to be tried in London or Middlesex, and the defendant gives notice of his intention to try the action by a special jury, the Court or a Judge, if satisfied that such notice is given for the purpose of delay, may order that the action be tried by a common jury ; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 111. The application should be supported by an affidavit of the facts ; *Dunn* v. *Cox*, 16 M. & W. 439, *per* Pollock, C. B.

(*p*) Either party is at liberty to apply by summons to a Judge at Chambers for a view by the jury summoned for any trial ; Cons. Ord. XLI. 36. Such summons must state the place at which the view is to be made, and the distance thereof from the office of the under-sheriff ; *Ibid.* rule 37. No affidavit in support is necessary, as the summons states all the particulars for which in the other divisions of the Court an affidavit is required ; see Reg. Gen. H. T. 1853, rule 49. Upon the hearing of the summons each party must name a shower for the view ; Cons. Ord. XLI. 36.

771.
Order thereon (*q*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. . . . . Defendant.

Upon the application, &c. It is ordered that the Sheriff of ——, do cause the place in question to be shown to six or more of the jury

[*Or, if a special jury, say:*] six or more of the first twelve jurors

summoned and impanelled to try this action, or as many more of such jurors as he shall think fit: in order that they may take a view of the place in question, on the —— day of —— next, at —— of the clock in the forenoon of the same day; and that the said jurors do meet at the house of I. P., known by the name or sign of ——, at ——, in the county [*Or*, city] of ——, and then and there be refreshed at the equal charge of the said parties; and that S. P. on the part of the plaintiff, and S. D. on the part of the defendant, do show the place in question to those jurors; but that no evidence be then and there given to the said jurors. And it is ordered that the Sheriff of ——, do return the names of such of the said jurors as shall view the said place to the associate in the High Court of Justice, for the purpose of their being called as jurymen upon the trial of this action. And it is further ordered that the plaintiff [*Or*, defendant], his solicitor or agent, do deposit in the hands of the Under-sheriff of the said county, the sum of £—— for payment of the expenses of the same view, pursuant to the statute of the sixth year of King George the Fourth, c. 30, s. 23, and to the General Order of the Court of Chancery in that behalf made (*r*); and that if such sum shall be more than

(*q*) See Cons. Ord. XLI. 36; Sched. (N), No. 5. As to the proceedings under an order for a view, see Cons. Ord. XLI. 38; Dan. Pr. 952, 953; Chitty's Arch. 371, 372.

(*r*) By Cons. Ord. XLI. 37, the sum to be deposited in the hands of the Under-sheriff is £10 in the case of a common jury, and £16 in case of a special jury; if the distance from the Under-sheriff's office to the place to be viewed does not exceed five miles; and £15 in case of a common jury, and £21 in case of a special jury, if it is above five miles; and the Under-sheriff is to pay and account for the money deposited, according to the following scale: For travelling expenses to the Under-sheriff, showers, and jurymen, expenses actually paid, if reasonable.—Fee to the Under-sheriff where the distance does not exceed five miles from his office, £1 1*s.*—Where such distance exceeds five miles £2 2*s.*—And in case he shall be necessarily absent more than one day, then for each day after the first, a further fee of £1 1*s.*—Fee to each of the showers: the same as the Under-sheriff: calculating the distance from their respective places of abode.—Fee to common juryman, per diem, 5*s.*—For each special juryman, per diem, £1 1*s.*—Allowance for refreshment to the Under-

sufficient to pay the expenses of the said view, the surplus be forthwith returned to the plaintiff's [*Or*, defendant's] solicitor; and if such sum shall not be sufficient to pay such expenses, the deficiency be paid forthwith by such solicitor to the said Under-sheriff: the plaintiff [*Or*, defendant], by his solicitor, consenting that in case no view shall be had, or if a view shall be had by any of the said jurors, whether they shall happen to be six or any particular number of the jurors who shall be mutually consented to, yet the said trial shall proceed, and no objection shall be made on account thereof.

(5.) *The Brief.*

772. Brief on the trial of the action: where witnesses are examined *vivâ voce* in open court (*s*).

187—. B. No. .

(1) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. . . . . Defendant.
Brief for the plaintiff [*Or*, defendant].

(1) Contents.

CASE.

[*Insert the narrative of the case: which should be stated accu-*

sheriff, showers, and jurymen, whether common or special, each, per diem, 5*s*. —To the bailiff for summoning each juryman whose residence shall not be more than five miles distant from the office of the Under-sheriff, 2*s*. 6*d*.—And to the bailiff for summoning each juryman whose residence does exceed five miles of such distance, 5*s*.

(*s*) The plaintiff's brief will consist of a copy of all the pleadings in the action, and (where evidence has been taken by affidavit) a copy of such evidence. The defendant's brief will consist of a copy of his own and the plaintiff's pleadings, and (where evidence has been taken by affidavit) a copy of his own and the plaintiff's evidence. A copy of any particulars that have been delivered in the action, of the notice of trial, of any notices to admit and to produce that have been given in the action, and of any admissions that have been made, should accompany the brief. Copies of or extracts from documents which have been made evidence, or which will be put in evidence, or which will be used upon the trial, should also accompany the brief. Where the evidence is taken by the *vivâ voce* examination of witnesses in open Court, counsel should also be furnished with a concise statement in a narrative form of his client's case, and also with a statement of the material facts which each witness to be called can prove. Where the evidence is taken by affidavit this will be unnecessary; but in that case the brief should be accompanied by any necessary and proper observations. Where witnesses are to be cross-

rately, and with as much conciseness as is consistent with perspicuity, and generally in the order of time at which the events took place; after which, proceed thus:]

PROOFS.

To prove that [*Insert the facts as they are to be proved, and add*] Call { [*Insert the name and profession, trade, or business of each witness; and, if the case depends upon the testimony of old people, add also the age.*]

[*Fold the brief longways, and indorse it thus:*]

(2) Indorsement.

(2) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
To be tried before the Master of the Rolls [*or as may be*] with witnesses. *Or,*
To be tried at the sittings in Middlesex [*Or,* in London; *Or,* at the Wiltshire assizes] by a common [*Or,* special] jury.

Brown
v.
Dobinson,
187—. B. No.

Brief
on the Trial of the Action.

For the plaintiff [*Or,* defendant],
Mr. Y., Q. C.
— Guineas.
Consultation . . — „
— „

With you,
Mr. Z.
Consultation on the —— day of ——, 187—, at —— of the clock in the —— noon, at [*State where*].

P. & Q.,
300, Chancery Lane,
Solicitors for plaintiff [*Or,* defendant].

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examined, it will often be useful to furnish counsel with a separate paper of notes or instructions for the cross-examination of particular witnesses. Where the papers sent to counsel are numerous, they should be numbered consecutively in the top right hand corner, and an index should accompany.

773.

The like: where evidence taken by affidavit (*t*).

187—. B. No. .

(1) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. . . . . Defendant.

(1) Contents. Brief for the plaintiff [*Or*, defendant].

OBSERVATIONS.

[*Here copy any observations which may be necessary and proper.*]

[*Fold the brief longways, and indorse it, thus:*]

(2) Indorsement. (2) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
To be tried before the Master of the Rolls [*or as may be*] on affidavit evidence [*If so, add:*] and the cross-examination of witnesses in open Court.

Brown
v.
Dobinson,
187—. B. No. .

Brief
[*Conclude as in* No. 772 *ante.*]

(6.) *Advancing and Postponing the Trial.*

774.

Consent to action being prematurely heard (*v*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

We consent to this action being placed in the paper of actions for trial before the Master of the Rolls [*or as may be*], on the —— day of ——, 187—.

Dated —— day of ——, 187—.

O. P., solicitor for the plaintiff,
Q. R., solicitor for the defendant C. D.,
S. T., solicitor for all the other defendants.

(*t*) See note (*s*) to No. 772 *ante*.

(*v*) Except by consent the action will not be placed in the paper for trial until after the day named in the notice of trial.

775. Notice of motion to advance an action (*w*).

Formal parts: see post No. 1571.
on the part of the plaintiff [*or as may be*], that this action may be advanced, and may be ordered to come on for trial next after the actions which have already been placed in the paper of any day for trial.

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776. Consent to adjournment of trial (*x*).

187—. B. No. .
In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
B. *v.* D.

We request and consent that this action, which is set down to be tried before the Master of the Rolls [*or as may be*], be not placed in the paper of actions for trial until the —— day of ——, 187—. And that it be marked in the Registrar's Book of Causes as standing over to that day.

Dated —— day of ——, 187—.
O. P., solicitor for plaintiff,
Q. R., solicitor for defendant C. D.,
S. T., solicitor for all the other defendants.

To the Registrars of the Chancery Division
of the High Court of Justice.

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777. Notice of motion that trial may be postponed (*y*).

Formal parts: see post No. 1571.
on the part of the plaintiff [*or as may be*], that the trial of this action may be postponed until [*State when*]; and that this action may be marked accordingly in the Registrar's Book of Actions standing for trial.

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778. Notice of motion to fix a day for the trial of the action.

Formal parts: see post No. 1571.
on the part of the plaintiff [*or as may be*], that a day may be fixed for the trial of this action.

(*w*) As to advancing actions, see Dan. Pr. 835, 836.

(*x*) Upon production to the Registrar of a request or consent signed by the solicitors for all parties, at the latest in the forenoon of the day before the day the action is to be in the paper, it will be marked as standing over to a day to be named; Registrar's Regulations, March, 1860, rule 13.

(*y*) The Judge may postpone or adjourn the trial for such time and upon such terms as he shall think fit; R. S. C. Ord. XXXVI. 21. The application should be made at the latest in the forenoon of the day before the day on which the action is to be in the paper for trial; Registrar's Regulations, March, 1860, rule 13. As to the adjournment of trials, see Dan. Pr. 838, 839. The Court ought not to grant to the plaintiff the indulgence of postponing the trial, unless he has used due diligence, and has good and strong reason for seeking a postponement; *Steuart* v. *Gladstone*, 7 Ch. D. 394.

(7.) *The Trial* (*z*).

(*z*) A trial before a Judge in the Chancery Division takes place before a single Judge; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 42; and a trial by jury at the sittings in London or Middlesex, or at the assizes, takes place before a single Judge, unless it be specially ordered to be held before two or more Judges; R. S. C. Ord. XXXVI. 7. Where questions of fact are so severed from questions of law that they can be disposed of separately, upon the questions of fact, only one counsel will be heard on each side; upon the questions of law, two counsel will be heard; *Connington* v. *Gilliatt*, 1 Ch. D. 694. If when an action is called on for trial, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him; R. S. C. Ord. XXXVI. 18; but if when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, will be entitled to judgment dismissing the action; but if he has a counter-claim, then he may prove such claim so far as the burden of proof lies upon him; *Ibid.*, rule 19. But any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within six days after the trial; *Ibid.*, rule 20; for form of application, see *post* No. 816. Where the trial takes place before a Judge without a jury, the Judge may direct any issue of fact in the action to be tried by a Judge with a jury; R. S. C. Ord. XXXVI., rule 27; and in any case the Judge may postpone or adjourn the trial for such time and upon such terms as he shall think fit; *Ibid.*, rule 21. When the action or the issues in an action are tried before a jury, each party has a right to have the questions of fact submitted and left by the Judge to the jury, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such questions; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 22. The right may be enforced by motion either in the High Court of Justice or in the Court of Appeal; *Ibid.* Upon the trial of an action the Judge may, at or after the trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment; R. S. C. Ord. XXXVI. 22 (R. S. C. Dec. 1876, rule 3). When there are several distinct issues, the Judge may, without any consent, accept the verdict of the jury on those issues on which they are agreed, and discharge them upon the others, and judgment may be directed upon the causes of action upon which the jury have found, and a new trial may take place of the undecided issues; *Marsh* v. *Isaacs*, 45 L. J. C. P. 505. Upon any trial at the assizes, or at the London or Middlesex sittings of the High Court, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate will enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose; R. S. C. Ord. XXXVI. 23; and if the Judge directs that any judgment be entered for any party, the certificate of the associate to that effect is a sufficient authority to the proper officer to enter judgment accordingly; *Ibid.*, rules 24, 25. For forms of judgment entered at the trial of the action, see *post* Nos. 841, 842. When the trial takes place before an official or special referee, he may, subject to any special order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem ex-

(8.) *Calling, Challenging, and Swearing the Jury.*

779. Calling the jury (*a*).

Gentlemen of the jury: Answer to your names.

pedient for the better disposal of the controversy before him; and evidence is taken at such trial, and the attendance of witnesses may be enforced by *subpœna*, and every such trial is to be conducted in the same manner, as nearly as circumstances will admit, as trials before a Judge of the High Court, but not so as to make the tribunal of the referee a public court of justice; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57; R. S. C. Ord. XXXVI. rules 30, 31. The referee is, unless otherwise directed by the Court or a Judge, to proceed with the trial *de die in diem*, in a similar manner as in actions tried by a jury; R. S. C. Ord. XXXVI. rule 30; neglect to comply with this rule is misconduct on the part of the referee; but a party who has at the time acquiesced in such non-compliance, cannot afterwards move to set aside the proceeding before the referee on that ground merely; *Robinson* v. *Robinson*, 24 W. R. 675. The Rules of Court require the official referees to sit at least from 10 a.m. to 4 p.m. on every day during the Michaelmas, Hilary, Easter, and Trinity sittings of the High Court of Justice, except on Saturdays during such sittings, when they are to sit at least from 10 a.m. to 2 p.m.; and they may, notwithstanding the rule, sit on other days; R. S. C. Ord. LXI. 10 (R. S. C. Feb. 1876, rule 10). Subject to any special order of the Court or a Judge, a referee has the same authority in the conduct of any trial as a Judge of the High Court when presiding at a trial before him; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 57, 58; R. S. C. Ord. XXXVI. 32; he may at the trial of an action direct judgment to be entered for any party; compare R. S. C. Ord. XXXVI. 22 (R. S. C. Dec. 1876, r. 3); R. S. C. Ord. XXXVI., 32; *Ibid.*, Ord. XL., 2, 3, 5; *Ibid.*, App. D, form 6; but see *Longman* v. *East*, 26 W. R. 183, at pp. 185, 187; 3 C. P. D. 142, at pp. 156, 157, 161; for form of judgment, see *post* No. 843; and when an issue of fact is tried before him, his report thereon is equivalent to the verdict of a jury; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 58; but he has no authority to commit any person to prison, or to enforce any order by attachment or otherwise; R. S. C. Ord. XXXVI. 33; and his authority is confined to the trial of the action or the questions in the action, and does not extend to the making of orders upon interlocutory applications, as orders for the production of documents; *Rowcliffe* v. *Leigh*, 4 Ch. D. 661. The referee may, before the conclusion of any trial before him, or by his report, submit any question for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement may be entered as the Court may direct; and the Court has power to require any explanation or reason from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; R. S. C. Ord. XXVI. 34. As to references to referees, see further, *post*, Chap. XXXV., s. 1, pp. 1015—1024.

(*a*) As to who may be jurors, who are exempt from serving, and how exemption may be claimed, and the qualification of jurors, see Dan. Pr. 954—957; the Jury Act, 1870 (33 & 34 Vict. c. 77), ss. 6, 8—10, 12, 16, 19, and sched. The Judicature Acts and the Rules of Court thereunder do not affect the law relating to jurymen or juries; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 20. As to the mode of calling the jury, see Chitty's Arch. 381, 382.

780.
Challenge to the array (*b*).

B. } And now at this day, to wit on ——, come as well the
v. } plaintiff as the defendant, by their respective solicitors as
D. } aforesaid; and the jurors of the jury impanelled also come. And hereupon the (defendant) challengeth the array of the said panel: because he saith that [*&c.; State the matter of challenge with certainty and precision*]. And this he is ready to verify. Wherefore he prayeth judgment, and that the said panel may be quashed.

781.
Oath of triers of challenge to poll, to favour (*c*).

You shall well and truly try whether [*Name of juror challenged*] stands indifferent between the parties to this issue—So help you God.

782.
Oath to be administered to the jurors.

You shall well and truly try the question [*Or*, questions] between the parties, and a true verdict give according to the evidence—So help you God.

783.
Affirmation of a Quaker juryman.

I, A. B., being one of the people called Quakers, do solemnly, sincerely, and truly declare and affirm, that I will well and truly try the question [*Or*, questions] between the parties, and a true verdict give according to the evidence.

784.
Affirmation of a juryman under the 30 & 31 Vict. c. 35.

I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful. And I do also solemnly, sincerely, and truly affirm and declare, that I will well and truly try the question [*Or*, questions], between the parties, and a true verdict give according to the evidence.

(*b*) As to the different kinds of challenge, and the trial thereof, see Dan. Pr. 957—963; Chitty's Arch. 433—438. For the form in the text, see Chitty, Forms, 223.

(*c*) Chitty's Arch. 438.

(9.) *The Verdict.*

785. Oath of the usher of the Court, on jury retiring to consider their verdict.

You shall well and truly keep this jury in some private and convenient place, without meat, drink, or fire (candle-light excepted (*d*)). You shall not suffer any person to speak to them, neither shall you speak to them yourself, without leave of the Court, except to ask them if they are agreed on their verdict—So help you God.

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786. Delivery of the verdict (*e*).

1. Gentlemen of the Jury: Are you agreed upon your verdict?
2. How do you find?

(10.) *The Associate's Certificate.*

787. Associate's certificate after trial (*f*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

I certify that this action was tried before the Honourable Mr. Justice ——

[*If so, add:*] and a common [*Or*, special] jury of the county of ——,

on the —— day of ——, 187—.

The Judge [*Or*, jury] found [*State the findings of fact which the Judge has directed to be entered*].

The Judge directed that judgment should be entered for the plaintiff [*or as may be*].

Dated —— day of ——, 187—.

X. Y.,
Associate.

(*d*) The Jury Act, 1870 (33 & 34 Vict. c. 77), s. 23, provides that the jury may, at the discretion of the Judge, be allowed at any time before giving their verdict, the use of a fire when out of Court, and reasonable refreshment: such refreshment to be procured at their own expense.

(*e*) The verdict is delivered by the foreman of the jury in the presence and hearing of the remainder of the jury.

(*f*) If the Judge at the trial directs any judgment to be entered for any party, and the officer present at the trial is not the officer by whom judgments ought to be entered, the certificate of the associate will be a sufficient authority to the proper officer to enter judgment; R. S. C. Ord. XXXVI. 24, 25. For this certificate a fee of £1 is payable by means of a stamp impressed upon or adhesive to the certificate; Ord. as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522.

Section II.—Trial of Questions or Issues of Fact (*a*).

788.
Notice to have issues tried before judge and jury (*b*).

[*Same as* No. 746 *ante*.]

789.
Notice of motion for order for trial of issues.

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that the following questions or issues of fact [*Or*, partly of fact and partly of law] arising in this action may be tried [*Here state the mode of trial proposed; as thus:*]

before a Judge without a jury [*If so, add:* at the sittings in London; *Or*, at the sittings in Middlesex; *Or*, at the assizes to be holden in and for the county of ——] (*c*); *Or*,

before a Judge [*If so*, at the sittings, *&c.*, *as above*], with

(*a*) A trial of the issues or questions of fact in the action takes place in the following cases: (1) When the party to whom notice of trial of the action otherwise than before a Judge and jury is given, gives notice of his desire to have the issues of fact tried before a Judge and jury; R. S. C. Ord. XXXVI. 3, 4; (2) When any party to an action, with the leave of the Judge to whom the action is assigned, requires a question or issue of fact, or partly of fact and partly of law, to be tried and determined at the sittings in Middlesex or in London, or at the assizes: Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 29; (3) When the Court or a Judge directs the trial of any question or issue of fact, or partly of fact and partly of law, to be tried before a Judge without a jury; R. S. C. Ord. XXXVI. 26; or before a Judge with a jury; *Ibid.*, rule 27; or before an official or special referee; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57. As to the right of a party to have the action or the issues of fact in the action tried before a Judge and jury, see *supra*, note (*a*) at p. 409.

(*b*) See note (*p*) to No. 746 *ante*.

(*c*) The Court or Judge may direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which, under the old practice, might without any consent of parties have been tried without a jury; R. S. C. Ord. XXXVI. 26. As to the cases in which the power conferred by this rule will be exercised, see *ante*, note (*a*) at p. 409. For form of application that the questions of fact in an action may be tried before a judge without a jury, notwithstanding a notice given under rule 3 or rule 4, see *ante* No. 747. The trial of the issue may be ordered to take place at the sittings in London or in Middlesex, or at the assizes; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 29; R. S. C. Ord. XXXVI. 29; but in such a case the order directing such trial must state on its face the reason for which it is expedient that the question or issue should be so tried, and should not be tried in the Chancery Division; R. S. C. Ord. XXXVI. 29*d* (R. S. C. Dec. 1876, rule 4); *West* v. *White*, 4 Ch. D. 631; *Warner* v. *Murdoch*, 4 Ch. D. 750, *per* Bramwell, L. J.; *Wood* v. *Hamblet*, 6 Ch. D. 113.

Mr. ——, of [*address and description*], and Mr. ——, of [*address and description*], as his assessors (*cc*) ; *Or*,
before a Judge and jury in Middlesex [*Or*, in London ; *Or*, at the assizes to be holden in and for the county of ——] (*d*) ; *Or*,
before the official referee in rotation (*e*) ; *Or*,
before Mr. ——, of [*address and description*], as special referee (*f*) ; *Or*,

(*cc*) As to trials with assessors, see note (*m*) to No. 744 *ante*. In this case, the notice should go on to fix the remuneration of the assessors ; see *ante* No. 744.

(*d*) The Court or a Judge may direct any question of fact to be tried before a Judge with a jury ; R. S. C. Ord. XXXVI. 27. Such trial will take place at the sittings in Middlesex or in London, or at the assizes, and not in the Chancery Division ; Sup. Cot. Jud. Act, 1873, s. 29 ; R. S. C. Ord. XXXVI. 29 ; *Clarke* v. *Cookson*, 2 Ch. D. 746 ; *Warner* v. *Murdoch*, 4 Ch. D. 750 : the order must therefore state on its face the reason for which it is expedient that the question should be so tried, and should not be tried in the Chancery Division ; R. S. C. Ord. XXXVI. 29*d* (R. S. C. Dec. 1876, rule 4) ; *Warner* v. *Murdoch*, 4 Ch. D. 750, *per* Bramwell, L. J. It has been held that it is sufficient to state in the order that one of the parties desires the question to be tried by a jury, and that the Court sees no reason to the contrary ; *West* v. *White*, 4 Ch. D. 631 ; but see *Wood* v. *Hamblet*, 6 Ch. D. 113.

(*e*) By the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57, it is provided that in any cause or matter (other than a criminal proceeding by the Crown) before the Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, or before a special referee to be agreed on between the parties. As to the cases in which the Court will exercise the power given by this section, see *ante*, note (*a*) at page 410. An application under the section, if made after notice of trial given, must be made within four days from the time of service of the notice of trial or within such extended time as the Court or a Judge may allow ; R. S. C. Ord. XXXVI. 5 ; *Lascelles* v. *Butt*, 2 Ch. D. 588 ; see *ante* No. 750. The Court or a Judge may direct a reference to any one in particular of the official referees, where it appears to the Court or Judge to be expedient ; R. S. C. Ord. XXXVI. 29*c* (R. S. C. June, 1876, rule 16) ; but where the issues are directed to be tried before the official referee in rotation, the order must be produced to the registrar's clerk, whose duty it is to distribute the business referred to the official referees, and he will endorse thereon a note specifying the name of the official referee in rotation, and the order so endorsed will be a sufficient authority for the official referee to proceed with the business so referred ; R. S. C. Ord. XXXVI. 29*a*, 29*b* (R. S. C. June, 1876, rules 14, 15). By s. 58 of the Sup. Cot. Jud. Act, 1873, the report of a referee upon any question of fact tried before him is made equivalent to the verdict of a jury unless set aside by the Court.

(*f*) As to the power of the Court or a Judge to order any question or issue of fact to be tried before a special referee, see the Sup. Cot. Jud.

before the official referee in rotation [*Or*, Mr. ——, of, *&c.*, as special referee], sitting with Mr. ——, of, *&c.*, and Mr. ——, of, *&c.*, as his assessors (*g*).

that is to say :

1. Whether, *&c.*
2. Whether, *&c.*

} [*Here state the questions to be determined*] (*h*).

790.

Notice of motion for order for trial of issues and to postpone determination of other issues (*j*).

Formal parts : see post No. 1571.

on the part of the plaintiff [*or as may be*], that [*Proceed as in* No. 789 *ante, to end ; and add :*] And that the determination of the remaining questions or issues in this action may be postponed until after the determination of the said questions or issues hereinbefore directed to be tried.

791.

Notice of motion to have different questions determined by different modes of trial (*k*).

Formal parts : see post No. 1571.

on the part of the plaintiff [*or as may be*], that the questions or issues of fact arising in this action may be tried in the modes following, that is to say : the question or issue following, viz., whether, *&c.*, before [*here state the mode of trial proposed ; as in*

Act, 1873 (36 & 37 Vict. c. 66), s. 57 ; *supra*, note (*e*). As to the cases in which the Court or Judge will exercise this power, see *ante*, note (*a*), at page 410. As to the time within which the application should be made, see R. S. C. Ord. XXXVI. 5, and note (*e*), *supra*. A special referee, appointed under s. 57, has the same powers and duties, and proceeds in the same manner as an official referee ; Sup. Cot. Jud. Act, 1873, s. 57 ; and his report upon any question of fact tried before him is equivalent to the verdict of a jury, unless set aside by the Court ; *Ibid.*, s. 58. His remuneration, if any, must be fixed by the Court ; *Ibid.*, s. 56 ; and the notice of motion should go on to deal with such remuneration ; see *ante* No. 743.

(*g*) As to trials with assessors, see note (*cc*) *supra ;* as to trials before an official referee, see note (*e*) *supra ;* as to trials before a special referee, see note (*f*) *supra*.

(*h*) For forms of various issues, see Seton, ed. 4, 381, *et seq.*

(*j*) The Court or a Judge may order that one or more questions or issues of fact in an action be tried before any other or others ; R. S. C. Ord. XXXVI. 6. If the result of the trial of such issues renders the trial of the other issues in the action unnecessary, or renders it desirable that the trial thereof should be postponed, any party may apply to the Court or a Judge for leave to set down the action on motion for judgment without waiting for the trial of the other issues in the action ; R. S. C. Ord. XL. 8.

(*k*) The Court or a Judge may order that the different questions of fact arising in an action be tried by different modes of trial ; R. S. C. Ord. XXXVI. 6.

No. 789 *ante*]; and the question or issue following, viz., whether, &c., before [*here state the mode of trial proposed*].

792.
Notice of trial of issues (*l*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Take notice of trial of the issues in this action ordered to be tried before [*here state the mode of trial, as in the order*] for the —— day of —— next.

Dated this —— day of ——, 187—.

X. Y.,
Solicitor for the plaintiff [*Or,* defendant].

To Mr. P. Q.,
Solicitor for the defendant [*Or,* plaintiff].

793.
Countermanding notice of trial (*m*).

[*Same as* Nos. 752 *to* 754 *ante.*]

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793 a.
Entering the issues for trial and subsequent proceedings down to verdict.

[*These are the same as where the trial is of the action, with a merely verbal alteration, viz., the substitution of the words,* "issues in this action," *for the words,* "this action;" *see ante* Nos. 755 *to* 787. *The Judge or referee, before whom the issues are tried, has no power on the trial to direct judgment to be entered for any party, but the action must be set down on motion for judgment after the issues have been determined; R. S. C., Ord. XL., rule* 7. *For form of notice of motion for judgment and the proceedings thereon, see post* Nos. 821 *et seq. For form of judgment on the motion, see post* No. 849.]

(*l*) See note (*e*) to No. 740 *ante.*
(*m*) See note (*w*) to No. 752 *ante.*

Section III.—Trial of Questions of Law (*a*).

794.

Notice of motion or summons that a special case may be stated (*b*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that a special case may be stated in this action, raising the following questions of law for the opinion of this Court, that is to say:

1. Whether, *&c.*
2. Whether, *&c.*

And that all other proceedings in this action may be stayed until after the determination of such questions.

795.

Notice of motion or summons that question of law may be set down for argument (*b*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that the following question of law may be set down to be argued before the Court, viz., whether, *&c.*; and that upon such argument the Court and the parties may be at liberty, in addition to reading the pleadings in this action, to refer to the whole contents of any documents mentioned or referred to in such pleadings. And that all other proceedings in this action may be stayed until after the determination of such question.

(*a*) The parties to an action may, at any time after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court; R. S. C. Ord. XXXIV. 1; or if in any action it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in the action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed; *Ibid.*, rule 2. Under this order only such questions of law can be raised for the decision of the Court as must necessarily arise in the action; *Republic of Bolivia* v. *National Bolivian Navigation Co.*, 24 W. R. 361.

(*b*) This application is made under R. S. C. Ord. XXXIV. 2; see note (*a*) *supra*. The application may be made immediately after appearance and before pleading; but in that case it must be shown, by affidavit or otherwise, that there are no facts in dispute, but only a question of law, or that there is a question of law in the action which will render the determination of the disputed facts unnecessary; *Metropolitan Board of Works* v. *New River Co.*, 1 Q. B. D. 727. An order under rule 2, is for the discretion of the Judge, and the Court of Appeal will not interfere with such discretion; *Metropolitan Board of Works* v. *New River Co.*, 2 Q. B. D. 67. For form of order to set down a question of law for argument without stating a special case, see *Curteis* v. *Wormald*, M. R. at Chambers, 19 May, 1876, Reg. Lib. A. 1000; Seton, ed. 4, 45.

796. Special case (*c*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Special case stated by consent [*Or*, by order, dated —— day of ——, 187—] for the opinion of the Court, pursuant to the Rules of the Supreme Court, Ord. XXXIV.

1.
2.
3.
4. } [*Here state concisely, in paragraphs numbered consecutively, such facts and documents as may be necessary to enable the Court to decide the questions raised.*]

The questions submitted for the opinion of the Court, are:

1. Whether, *&c.*
2. Whether, *&c.*

X. Y., solicitor for the plaintiff.
T. Z., solicitor for the defendant.

NOTE.—This special case is filed by X. Y., of [*place of business*], solicitor for the above-named plaintiff.

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797. *Præcipe* for filing special case (*d*).

B. *v.* D.

For filing special case.

X. Y.,
Plaintiff's solicitor.

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798. Notice of filing special case (*d*).

Formal parts: see ante No. 21.

Take notice that I have this day filed the special case stated in this action.

(*c*) Every special case must be divided into paragraphs numbered consecutively, and must state concisely such facts and documents as may be necessary to enable the Court to decide the questions raised thereby; R. S. C. Ord. XXXIV. 1. The special case must be printed by the plaintiff, and signed by the several parties or their solicitors; *Ibid.*, rule 3; but it need not be signed by counsel; *Hare* v. *Hare*, W. N. (1876), 44. The case must be filed by the plaintiff with the clerk of records and writs, or with the district registrar; R. S. C. Ord. XXXIV. 3. On filing it a fee is payable of 10*s.* on the lower scale, and £1 on the higher scale; Ord. as to Court Fees, Oct. 1875, Sched.; Wilson, 506; this fee is payable by a stamp impressed where practicable, on the special case, and in other cases on a *præcipe* to be filed; Ord. as to Fees, April, 1876, Sched; Wilson, 522.

(*d*) As to filing the special case, see note (*c*) to No. 796 *ante*.

799.

Motion paper to amend special case by consent (*e*).

Formal parts: see post No. 1570.

To move on behalf of all parties, that the plaintiff may be at liberty to amend the special case stated in this action, pursuant to the Rules of the Supreme Court, Ord. XXXIV., as he may be advised.

The case has not been set down for argument.

800.

Petition of course for the like (*g*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff.

Showeth as follows:

1. Pursuant to the Rules of the Supreme Court, Ord. XXXIV., a special case has by consent [*Or*, by order, dated —— day of ——, 187—] been stated and filed in this action.

2. The said case has not been set down for argument.

3. Your petitioner is now advised to amend the said case.

Your petitioner therefore humbly prays that by consent of the defendant he may be at liberty to amend the said special case as he may be advised.

And your petitioner will ever pray, &c.

802.

Notice of motion or summons to amend special case (*h*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to amend the special case stated and filed in this action, pursuant to the Rules of the Supreme Court, Ord. XXXIV., by [*Here specify the amendment which it is desired to make*]; and that the costs of this application may be costs in the action.

(*e*) Before a special case is set down for argument, an order giving leave to amend it may by consent of all parties be obtained on motion or petition of course; where all parties do not consent, or where the case has been set down for argument a special order must be obtained on motion, or summons on notice; Dan. Pr. 1704. For form of order on motion on behalf of all parties, see *Fletcher* v. *Fletcher*, V.-C. S. 19 Feb. 1864, Reg. Lib. A. 281.

(*g*) See note (*e*) to No. 799 *ante*. For order in like case, see *Mure* v. *Mure*, M. R. 2 Dec. 1869, Rolls Lib. For form of consent to the petition, see *post* No. 1577.

(*h*) See note (*e*) to No. 799 *ante*.

803. *Præcipe* for amendment of special case (*j*).

B. *v.* D.

For amending special case.

X. Y.,
Plaintiff's solicitor.

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804. Notice of motion for leave to set down special case (*k*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that he may be at liberty to set down for argument the special case stated and filed in this action, pursuant to the Rules of the Supreme Court, Ord. XXXIV.

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805. Affidavit in support.

Formal parts: see ante No. 693.

1. The statements contained in the special case stated and filed in this action on the —— day of ——, 187—, so far as the same affect the interest of [*Here insert the name of the person under disability*], are respectively true.

2. [*Show means of knowledge.*]

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806. Memorandum on entering special case or question of law for argument (*l*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Set down for argument the special case filed in this action on

(*j*) The draft of the case as amended must be signed by the parties or their solicitors; and if the amendments do not extend in any one place to more than 144 words, the officer with whom the case has been filed will insert the amendments in the original case on the draft amended case being left with him, together with a *præcipe*; if the amendments exceed this limit, a new print must be filed; Dan. Pr. 1705. The order to amend must be produced to the officer; *Ibid.*

(*k*) No special case in an action to which a married woman, infant, or person of unsound mind is a party can be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true; R. S. C. Ord. XXXIV. 4. For form of affidavit, see *post* No. 805. In *Elwes* v. *Elwes*, 20 W. R. 480, a case under 13 & 14 Vict. c. 35, s. 13, counsel's statement was accepted as sufficient evidence. For form of order on the motion, see Seton, ed. 4, p. 45, No. 6.

(*l*) Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the

the —— day of ——, 187— [*Or*, the question of law directed to be set down for argument by order, dated —— day of ——, 187—].

Dated —— day of ——, 187—.

X. Y.,
Solicitor for the plaintiff [*Or*, defendant].

807.

Notice that special case or question of law set down for argument (*m*).

Formal parts: see ante No. 21.

Take notice that I have this day set down for argument the special case stated and filed in this action [*Or*, the question of law directed to be set down for argument by the order, dated the —— day of ——, 187—].

Dated —— day of ——, 187—.

809.

Brief on argument (*n*).

(1) Contents.

187—. B. No. .

(1) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.
Brief for the plaintiff [*Or*, defendant].
Observations.
[*Here copy any necessary and proper observations.*]

order giving leave to enter the same for argument; R. S. C. Ord. XXXIV. 5. For form of memorandum of entry, see R. S. C. App. (B), form 13. On entering the special case a fee is payable of £1 on the lower scale, and £2 on the higher scale; Ord. as to Court Fees, Oct. 1875, Sched.; Wilson, 506; this fee is payable by means of a stamp impressed upon the memorandum; Ord. as to Fees, April, 1876, Sched.; Wilson, 522. The plaintiff must deliver to the officer printed copies of the case for the use of the Judge; R. S. C. Ord. XXXIV. 3.

(*m*) As to the service of the notice, see R. S. C. Ord. XIX. 6; Cons. Ord. III. 2, 5; and *ante*, note (*e*) to No. 740. For form of affidavit of service, see *ante* No. 741.

(*n*) The brief should consist of a copy of all the pleadings (if any) in the action, a copy of the special case (where a special case has been stated), copies of any material documents not fully stated in the pleadings or the special case, and of such observations as may be necessary and proper.

[*Fold the brief longways and indorse it thus:*] (2) Indorsement.

(2) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Brown
v.
Dobinson

Brief on argument of special case stated [*Or*, of question of law directed to be argued], pursuant to R. S. C., Ord. XXXIV.

For the plaintiff [*Or*, defendant].

Mr. X., Q.C.

[*Continue as in* No. 772 *ante.*]

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810. Order on argument of special case or question of law (*o*).

—— day of ——, 187—.

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

The special case stated for the opinion of this Court [*Or*, The question of law ordered to be argued before this Court], pursuant to the Rules of the Supreme Court, Ord. XXXIV., coming on this day, to be heard and debated before this Court in the presence of counsel for the plaintiff and defendant, upon debate of the matter, and hearing what was alleged by counsel on both sides, this Court doth declare that, *&c.*

(*o*) Upon the argument of the special case, the Court and the parties are at liberty to refer to the whole contents of any documents stated in the case, and the Court is at liberty to draw from the facts and documents stated in the case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial; R. S. C. Ord. XXXIV. 1. The order made on the argument of the special case, or of the question of law, merely declares the opinion of the Court on the questions of law raised; see the form in Seton, ed. 4, 44, No. 2; the party who, upon the decision of the questions is entitled to judgment, must obtain such judgment by moving for it; R. S. C. Ord. XL. 1; for form of notice of motion for judgment, see *post* No. 821.

CHAPTER XIII.

TRIAL IN THE COUNTY COURT (*a*).

—•—

811.
Summons that action may be tried in County Court.

Formal parts: see post No. 881.

on the part of the plaintiff [*or as may be*], that this action may be tried in the County Court of ——, holden at ——.

812.
Notice of day fixed for trial (*b*).

In the County Court of ——, holden at ——.

Between A. B. . . . Plaintiff,

and

C. D. . . . Defendant.

Whereas, under the provision of section 26 of 19 & 20 Vict.,

(*a*) By the County Courts Act, 1856 (19 & 20 Vict. c. 108), s. 26, it is provided that where in any action of contract the claim indorsed on the writ does not exceed £50, or such claim, though it originally exceeded £50, is reduced by payment into Court, payment, an admitted set-off or otherwise, to a sum not exceeding £50, a Judge of a Superior Court, on the application of either party after issue joined, may in his discretion, and on such terms as he shall think fit, order that the cause be tried in any County Court which he shall name, and thereupon the plaintiff shall lodge with the Registrar of such Court such order and the issue; and the Judge of such Court shall appoint a day for the hearing of such cause, notice whereof shall be sent by post or otherwise by the Registrar, to both parties or their solicitors; and after such hearing the Registrar shall certify the result to the master's office of such Superior Court, and judgment in accordance with such certificate may be signed in such Superior Court. No motion for judgment is necessary; the proper officer will enter the judgment on production of the certificate of the Registrar of the County Court; R. S. C. Ord. XLI. 4, 5; *Scutt* v. *Freeman*, 2 Q. B. D. 177. For form of judgment after a trial in the County Court, see *post* No. 844. Either party has a right to have the action tried before a jury; *Ford* v. *Taylor*, 3 C. P. D. 21. A motion for a new trial must be made to the Superior Court; *Balmforth* v. *Pledge*, L. R. 1 Q. B. 427; *Copcutt* v. *Gt. Western Ry. Co.*, L. R. 2 C. P. 465; *Ford* v. *Taylor*, 3 C. P. D. 21; but see *White* v. *Mainwaring*, 25 W. R. 253. The costs will be taxed in the Superior Court, but, in the absence of any special directions, the costs of the proceedings in the County Court will be taxed on the County Court scale; *Wheatcroft* v. *Foster*, E. B. & E. 737.

(*b*) See Schedule of forms to County Court Rules, 1875, No. 79. Upon the order being drawn up, the plaintiff must lodge it and a copy of the pleadings

c. 108, an action commenced in Her Majesty's High Court of Justice, wherein A. B., of [*address and description*], is plaintiff, and C. D., of [*address and description*], is defendant, has been ordered by the Master of the Rolls [*or as may be*] to be tried in this Court.

Take notice, that the said action will be tried in this Court on the —— day of ——, 187—, at the hour of —— in the —— noon.

To plaintiff and defendant.

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813. Registrar's certificate of result of trial (*c*).

In the County Court of ——, holden at ——.

Between A. B. . . . Plaintiff,

and

C. D. . . . Defendant.

I hereby certify that an action commenced in the High Court of Justice, wherein A. B. is plaintiff and C. D. is defendant, which, under section 26 of the County Courts Act, 1856, was ordered by a Judge thereof to be tried in this Court, has been heard accordingly in this Court on this day, and that the result was as follows:

[*Here state the findings or that the plaintiff was non-suit.*]

Dated this —— day of ——, 187—.

—— Registrar.

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in the action (which, it is presumed, takes the place of the issue) with the Registrar, who will then appoint a day for the hearing, and send a notice thereof to the parties or their solicitors; 19 & 20 Vict. c. 108, s. 26. A reasonable notice must be given, but not necessarily the same as in the Superior Court; *Ipswich Gas Co.* v. *Norman*, 7 B. & S. 847.

(*c*) See Schedule of forms to County Court Rules, 1875, No. 103, and see note (*a*) *supra*.

CHAPTER XIV.

NEW TRIAL (*a*).

814. Summons to enlarge time for moving for a new trial (*b*).

Formal parts: see post No. 881.

on the part of the plaintiff [*or as may be*], that the time limited by the Rules of the Supreme Court, Order XXXVI., rule 20 [*Or*, Order XXXIX., rule 1(*a*), for the applicant to apply for a new trial of this action may be enlarged to the —— day of ——, 187—.

(*a*) As to the grounds upon which a new trial will be directed, see Chitty's Arch. 1518 to 1535; Dan. Pr. 987—1003; R. S. C. Ord. XXXVI. 20. A new trial may not be granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; R. S. C. Ord. XXXIX. 3; when, therefore, evidence was improperly admitted, which, by the finding of the jury, became immaterial, a new trial was refused; *Earp* v. *Faulkner*, 24 W. R. 774. If it appear to the Court that the wrong or miscarriage occasioned by such misdirection or improper admission or rejection of evidence affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only; R. S. C. Ord. XXXIX. 3; and a new trial may be ordered on any question in an action whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question; *Ibid.*, rule 4; see *Marsh* v. *Isaacs*, 45 L. J. C. P. 505. Upon a motion for a new trial, the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit; R. S. C. Ord. XL. 10.

(*b*) Where one party does not appear at the trial, an application by him to set aside any verdict or judgment obtained in his absence must be made within six days after the trial; R. S. C. Ord. XXXVI. 20. This time may be extended by the Court or Judge, and that although the application for such extension be not made until after the expiration of the time allowed; R. S. C. Ord. LVII. 6; for order enlarging the time after the expiration of the time allowed, see *Michell* v. *Watson*, 25 W. R. 380. Under R. S. C. Ord. XXXIX. an application to a divisional Court for a new trial must, if the trial has taken place in London or Westminster, be made within four days after the trial, or on the first subsequent day on which a divisional Court to which the application may be made shall have actually sat to hear motions; or, if the

815. The like, after the time limited has expired (*b*).

Formal parts : see post No. 881.

on the part of the plaintiff [*or as may be*], that, notwithstanding the expiration of the time limited by the Rules of the Supreme Court, Order XXXVI., rule 20 [*Or*, Order XXXIX., rule 1*a*] the applicant may be at liberty on or before the —— day of ——, 187—, to apply for a new trial of this action.

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816. Notice of motion for a new trial where one party did not appear at the first trial (*c*).

Formal parts : see post No. 1571.

on the part of the plaintiff [*or as may be*], that the findings of the jury [*Or*, of the Judge ; *Or*, of the referee] upon the trial of this action [*Or*, of the issues of fact in this action ; *Or*, of the issues directed to be tried by the order dated —— day of ——, 187—], and the judgment directed to be entered in this action may be set aside, and that a new trial may be directed of this action [*Or*, of the issues of fact in this action ; *Or*, of the said issues directed to be tried by the order dated —— day of ——, 187—].

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trial shall have taken place elsewhere than in London or Middlesex, within the first four days of the next following sittings ; unless the Court or a Judge shall enlarge the time; R. S. C. Ord. XXXIX. 1*a* (R. S. C. Dec. 1876, rule 6). In computing time under this rule, days on which the divisional Court is not actually sitting are not reckoned ; *Hallams* v. *Hills*, 24 W. R. 956. When there has been a trial by a jury, the time begins to run from the day on which the jury are discharged, and not from the time when the Judge before whom the trial took place parts with the case ; *Shaw* v. *Hope*, 25 W. R. 729. Where the trial of the action has taken place in a County Court, under 19 & 20 Vict. c. 108, s. 26, R. S. C. Ord. XXXIX. 1*a*, does not apply, and the period within which an application for a new trial in such a case must be made, is governed by the old procedure before the Judicature Acts ; *London* v. *Roffey*, 3 Q. B. D. 6 ; *Dunn* v. *Pearson*, W. N. (1878) 82 ; such an application must therefore be made within four days from the day of trial, or if the cause is tried out of term, within the first four days of the next ensuing sittings ; Reg. Gen. H. T. 1853, rule 50.

(*b*) See note (*b*) to No. 814 *ante*.

(*c*) Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or Judge upon such terms as may seem fit ; R. S. C. Ord. XXXVI. 20 ; the application may be made either at the assizes or in Middlesex ; *Ibid.* Where a party does not appear at the trial owing to a slip, and the application is made in due time, it is a matter of course that the action should be restored to the list, on payment of the costs of the day, including all costs that have been wasted ; *Burgoine* v. *Taylor* (C. A.), W. N. (1878) 86 ; 26 W. R. 568 ; and see *Birch* v. *Williams*, 24 W. R. 400 ; *Cockle* v. *Joyce*, 7 Ch. D. 56 ; *Wright* v. *Clifford*, 26 W. R. 369. Where the plaintiff, not being ready to proceed with the trial of his action, applied for a postponement, and, upon its being refused, let judgment go by default at the trial, the Court of Appeal, upon evidence showing a reasonable explanation of the plaintiff's unreadiness, set aside the judgment and ordered the action to be restored to the list, on payment of the costs of the day, and of all the costs of the application ; *King* v. *Sandeman*, 26 W. R. 569. As to the time within which the application must be made, see note (*b*) to No. 814 *ante*.

817.
Motion paper for order *nisi* for new trial (*d*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*or as may be*], for an order calling upon the defendant [*or as may be*], to show cause why the findings of the jury [*Or*, of the Judge; *Or*, of the referee] upon the trial of this action [*Or*, of the issues of fact in this action; *Or*, of the issues directed to be tried by the order dated the —— day of ——, 187—], and the judgment directed to be entered in this action, should not be set aside, and why a new trial should not be directed of this action [*Or*, of the issues of fact in this action; *Or*, of the said issues directed to be tried by the order dated the —— day of ——, 187—].

(*d*) Where an action has been tried by a jury, an application for a new trial must be made to a divisional Court; R. S. C. Ord. XXXIX. 1 (R. S. C. Dec. 1876, rule 5); and that although the action itself is pending in the Chancery Division; *Hunt* v. *City of London Real Property Co.*, 3 Q. B. D. 19; overruling S. C. 2 Q. B. D. 205, and apparently the dictum of Baggallay, L. J., in *Warner* v. *Murdoch*, 4 Ch. D. 750. Where the trial has been by a Judge without a jury, the application for a new trial must be made to the Court of Appeal; R. S. C. Ord. XXXIX. 1 (R. S. C. Dec. 1876, rule 5); *Oastler* v. *Henderson*, 2 Q. B. D. 575. As to the practice on an application for a new trial, where the trial has taken place in the Chancery Division, *quære;* see *per* Thesiger, L. J., in *McAndrew* v. *Barker*, 26 W. R. 317. The application for a new trial is by motion for an order calling on the opposite party to show cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed; R. S. C. Ord. XXXIX. 1*a* (R. S. C. Dec. 1876, rule 6). As to the time within which the application should be made, see *Ibid.*, and *supra*, note (*b*) to No. 814. Where the action has been tried in a County Court under 19 & 20 Vict. c. 108, s. 26, the application for a new trial should be made to the Superior Court; *Balmforth* v. *Pledge*, L. R. 1 Q. B. 427; *Capcutt* v. *Great Western Ry. Co.*, L. R. 2 C. P. 465; and see *Ford* v. *Taylor*, 3 C. P. D. 21; but see *White* v. *Mainwaring*, 25 W. R. 253; as to the time within which the application must be made, see note (*b*) to No. 814 *ante*. As to the grounds upon which a new trial may be granted, and as to the powers of the Court upon a motion for a new trial, see note (*a*) at p. 446 *ante*. Where an order *nisi* is granted, a copy of such order must be served on the opposite party within four days from the time of the same being made; R. S. C. Ord. XXXIX. 2; such an order is a stay of proceedings in the action, unless the Court orders that it be not so as to the whole or any part of the action; *Ibid.*, 5; but this rule must be read subject to R. S. C. Ord. LVIII. 16, and, therefore, a rule *nisi* for a new trial granted by the Court of Appeal, ought not to be drawn up with a stay of proceedings; *Goddard* v. *Thompson*, 26 W. R. 362; but where a rule *nisi* for a new trial has been granted by the Court of Appeal, the Court below should, on an application for the purpose, order a stay of proceedings; *Goddard* v. *Thompson, ubi supra;* for form of application for stay of proceedings, see *post* No. 1442.

CHAPTER XV.

JUDGMENT.

Section I.—Motion for Judgment (*a*).

(*a*) Except where by the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), or by the Rules of the Supreme Court, it is provided that judgment may be obtained in any other manner, the judgment of the Court is to be obtained by motion for judgment; R. S. C. Ord. XL. 1. In the following cases judgment may be obtained without any motion for judgment: (1) In certain cases where a defendant makes default in appearing; R. S. C. Ord. XIII. rules 3 to 8; *ante* pages 181—207; (2) In certain cases where a defendant makes default in delivering a defence; R. S. C. Ord. XXIX. rules 2 to 8; *ante* pages 305—313; (3) Where an order for liberty to sign judgment is made under R. S. C. Ord. XIV.; *ante* pages 212, 213; (4) Where the plaintiff confesses a defence arising after the commencement of the action; R. S. C. Ord. XX. 3; *ante* No. 496 and note (*g*); (5) Where the plaintiff accepts money paid into Court in satisfaction of his entire cause of action; R. S. C. Ord. XXX. 4; *ante* pages 214, 215; (6) Where the action is discontinued wholly or in part; R. S. C. Ord. XXIII. 3 (R. S. C. June, 1876, rule 10); *ante* No. 546 and note (*b*); (7) Where at or after the trial of the action the Judge or referee before whom it is tried directs any judgment to be entered; R. S. C. Ord. XXXVI. 22 (R. S. C. Dec. 1876, rule 3); Sup. Cot. Jud. Act, 1873, ss. 57, 58; R. S. C. Ord. XXXVI. 32; *ibid.*, Ord. XL. 5; *post* Nos. 841, 842, 843; (8) Where an action of contract is tried in the County Court under 19 & 20 Vict. c. 108, s. 26; R. S. C. Ord. XLI. 5; *Scutt* v. *Freeman*, 2 Q. B. D. 177; *ante*, note (*a*) at page 444; *post* No. 844; (9) Where an action has been referred to an arbitrator under the Common Law Procedure Act, 1854, in which case judgment may be entered in accordance with the award of the arbitrator without motion for judgment; *Lloyd* v. *Lewis*, 2 Ex. D. 7. The following are the principal cases in which judgment will be obtained by motion for judgment; (1) Cases in which, by consent, the parties have dispensed with pleadings, or with a trial of the action; actions which are heard as "short" will generally be heard on motion for judgment, and in such actions no pleadings should be delivered; *Taylor* v. *Duckett*, W. N. (1875), 193; *Green* v. *Colcby*, 1 Ch. D. 693; but in such actions which involve the construction of a written instrument, the V. C. Malins requires a statement of claim to be delivered; *Brcton* v. *Mockett*, 33 L. T. N. S. 684; *Boyes* v. *Cook*, 33 L. T. N. S. 778; (2) Where a defendant has made default in delivering a defence in actions not within R. S. C. Ord. XXIX. rules 2 to 8; R. S. C. Ord. XXIX. rules 10, 11; (3) Where issues arise in any action other than between plaintiff and defendant, and any party to any such issue makes default in delivering any pleading; R. S. C. Ord. XXIX. 13; (4) Where there has been no trial of the action,

(1.) *The Notice of Motion.*

818.

Summons to enlarge time for serving notice of motion for judgment (*b*).

Formal parts : see post No. 881.

on the part of the plaintiff [*or as may be*], that the time within which the applicant may serve notice of motion for judgment in this action, and may set down the action on such motion, may be enlarged to the —— day of ——, 187—. And that the costs of this application may be costs in the action (*c*).

819.

Summons for leave to serve notice of motion for judgment notwithstanding expiration of time limited (*b*).

Formal parts : see post No. 881.

on the part of the plaintiff [*or as may be*], that, notwithstanding the expiration of the time limited for that purpose by the Rules of the Supreme Court, Order XL., rule 2 [*Or*, rule 9], he may be at liberty to serve notice of motion for judgment in this action, and to set down the action on such motion. And that the costs of this application may be costs in the action (*c*).

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but only of some question or questions of fact or of law therein ; R. S. C. Ord. XL. 7 ; *ante* Nos. 793a, 810, note (*o*) ; (5) Where on the trial of the action the Judge or referee has abstained from directing any judgment to be entered ; R. S. C. Ord. XL. 3 ; (6) Where on the trial of the action the Judge or referee has directed judgment to be entered, and any party is dissatisfied with the judgment so entered ; R. S. C. Ord. XL. 2, 4, 5 (R. S. C. Dec. 1876, rule 7).

(*b*) Where at the trial of an action the Judge or referee abstains from directing any judgment to be entered, or where issues or questions of fact have been tried or determined in any manner, the plaintiff must set down the action on motion for judgment within ten days after the trial, otherwise any defendant may do so ; R. S. C. Ord. XL. 3, 7. Where at the trial the Judge or referee has ordered judgment to be entered subject to leave to move, the party to whom leave has been reserved must set down the action on motion for judgment within the time limited by the Judge in reserving leave, or if no time has been limited, within ten days after the trial ; *Ibid.*, rule 2. In no case can an action be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do ; R. S. C. Ord. XL. 9. All these times may be enlarged by the Court or a Judge, and that notwithstanding the application for such enlargement is not made until after the expiration of the time allowed ; R. S. C. Ord. LVII. 6.

(*c*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22 ; note (*d*) to No. 402 *ante*.

820. Notice of motion or summons to postpone trial of issues and for leave to set down action on motion for judgment (*e*).

Formal parts: see post No. 1571 *or* No. 881.
on the part of the plaintiff [*or as may be*], that the trial of the following issues or questions of fact directed to be tried in this action, viz.: (1.) Whether, *&c.*, and (2.) Whether, *&c.*, may be stayed. And that, notwithstanding that the same issues have not been tried or determined, the applicant may be at liberty [*Conclude as in* No. 819 *ante*].

821. Notice of motion for judgment where no judgment entered (*f*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Take notice, that this honourable Court will be moved before his lordship the Master of the Rolls [*Or*, his lordship the Vice-Chancellor ——; *Or*, the honourable Mr. Justice ——], on ——day,

(*e*) Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the other of such issues or questions unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact; R. S. C. Ord. XL. 8.

(*f*) See note (*a*) at p. 449. The motion should be made before the Judge of the Chancery Division to whom the action is attached; but whether this is so when there has been a trial of the action before a Judge at the sittings in Middlesex or London or at the assizes, *quere*; see the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 17; *Hunt* v. *City of London Real Property Co., Limited*, 2 Q. B. D. 605. As to the time within which the notice of motion must be given and the action set down, see R. S. C. Ord. XL. 3, 7, 9; note (*b*) to No. 818 *ante*. The notice must be served before the action is set down on the motion; Seton, ed. 4, 39. The notice may be served by being left at the address for service of the party; R. S. C. Ord. XIX. 6; Cons. Ord. III. 2, 5; and in the case of any defendant who has not appeared, it may be served by being filed with the Record and Writ Clerk, or with the district registrar; R. S. C. Ord. XIX. 6, 29; *Dymond* v. *Croft*, 3 Ch. D. 512; *Morton* v. *Miller*, 3 Ch. D. 516. For form of affidavit of service, see *post* No. 1573; where the notice is filed with the officer of the Court, the service is proved by his certificate of such filing. For forms of judgment, see *post* Nos. 845 to 850.

the —— day of ——, 187— (*g*), or so soon thereafter as counsel can be heard by counsel on the part of the plaintiff [*Or*, of the defendant] for [*Here state the relief sought, which may be done thus:*]

judgment for the relief claimed by the indorsement of claim on the writ of summons in this action; *Or*,

judgment for the relief claimed by the plaintiff's statement of claim in this action; *Or*,

judgment dismissing this action with costs to be paid by the plaintiff; *Or*,

judgment for the relief claimed by the counter-claim delivered in this action by the defendant, and also dismissing the plaintiff's claim in this action with costs to be paid by the plaintiff; *Or*,

judgment in the terms set forth in the schedule hereto.

And take also notice, that the plaintiff [*Or*, defendant] intends to read and use in support of such motion a certificate of the Associate dated the —— day of ——, 187— [*Or*, the affidavits whereof a list is set forth at the foot of this notice].

[*If it is intended to mark the motion as "short," the following notice may be added* (*h*)*:*] And take also notice that the plaintiff [*Or*, defendant] intends to mark the said motion as "short," and that no further notice will be given of the said motion having been so marked.

[*If leave has been obtained under R. S. C., Order XL., rule* 8, *or rule* 9 (*j*), *to serve the notice of motion and set down the action, add:*] And take also notice that special leave to serve this notice of motion and to set down the action thereon has been obtained from the Master of the Rolls [*or as may be*].

Dated —— day of ——, 187—.

X. Y.,

Solicitor for the plaintiff [*Or*, defendant].

To the defendant [*Or*, plaintiff],

and to Mr. T. Z., his solicitor.

The list above referred to.

An affidavit of O. P., filed the —— day of ——, 187—.

An affidavit of R. S., filed the —— day of ——, 187—.

(*g*) There must be two clear days at least between the service of the notice and the day named in the notice for hearing the motion; R. S. C. Ord. LIII. 4; *Daubney* v. *Shuttleworth*, 1 Ex. D. 53. The day named in the notice must be a day on which the Court is sitting; *Daubney* v. *Shuttleworth*, *ubi supra*; *Deykin* v. *Coleman*, 25 W. R. 294.

(*h*) It is advisable that notices of motion for judgment should, if it be intended to mark them "short," contain a statement to that effect, and also a statement that no further notice will be given of their having been so marked. Such statements will dispense with the necessity for giving further notice that the motion has been marked short; Registrar's notice of April, 1876.

(*j*) See *ante* No. 819 note (*b*); No. 820 note (*e*).

822. Notice of motion to set aside a judgment entered and enter another (*k*).

Formal parts: as in No. 821 *ante.*

on the part of the plaintiff [*or as may be*], that the judgment entered in this action on the —— day of ——, 187—, may be set aside on the ground that [*Here specify the ground upon which the motion is made; as thus:*]

such judgment is wrong, by reason of the Judge having caused the finding to be wrongly entered with reference to the finding of the jury upon the question [*Or,* questions] submitted to them. *Or,*

upon the finding as entered such judgment is wrong.

And that judgment may be entered in this action for the plaintiff [*or as may be*] for [*Here specify the relief sought, see* No. 821 *ante.*]

And take also notice, that the plaintiff [*or as may be*] intends to

(*k*) Where at or after the trial of an action the Judge or referee has ordered that any judgment be entered subject to leave to move, the party to whom leave is reserved must set down the action on motion for judgment and give notice thereof to the other parties; R. S. C. Ord. XL. 2; where at or after the trial of an action by a jury, the Judge has directed that any judgment be entered, any party may without any leave reserved apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the Judge having caused the finding to be wrongly entered with reference to the finding of the jury upon the question or questions submitted to them; R. S. C. Ord. XL. 4 (R. S. C. Dec. 1876, rule 7); and where at or after the trial of an action before a Judge (with or without a jury), or before a referee, the Judge or referee has directed that any judgment be entered, any party may, without any leave reserved, apply to set aside such judgment and to enter any other judgment, upon the ground that upon the finding as entered the judgment so directed is wrong; R. S. C. Ord. XL. 4, 5 (R. S. C. Dec. 1876, rule 7). Where the trial took place before a Judge with or without a jury, a motion to set aside a judgment entered at or after the trial should be made before the Court of Appeal; R. S. C. Ord. XL. 4 (R. S. C. Dec. 1876, rule 7); except where it is made pursuant to leave reserved, in which case it should, it seems, be made to the High Court; R. S. C. Ord. XL. 2; and in that case it seems that the application should be made to the Judge of the Chancery Division to whom the action is attached; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 42; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11; but see the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 17; and *Hunt* v. *City of London Real Property Co., Limited*, 2 Q. B. D. 605. Where the trial took place before a referee the motion is made before the Judge of the Chancery Division to whom the action is attached; R. S. C. Ord. XL. 2, 5. The notice of motion should state the grounds of the motion and the relief sought, and, where the motion is made pursuant to leave reserved, that it is so made; R. S. C. Ord. XL. 2. As to the time within which the motion should be made and the action set down thereon, see R. S. C. Ord. XL. 2, 9, and note (*b*) to No. 818 *ante*. As to the service of the notice, see note (*f*) to No. 821 *ante*. For form of judgment on the motion, see *post* No. 851.

read and use in support of such motion a certificate of the Associate dated the —— day of ——, 187— [*or as may be.*]

[*If the motion is made pursuant to leave reserved at the trial* (*l*), *add:*] And take also notice that the said motion will be made pursuant to leave reserved at the trial of this action.

[*If leave has been obtained under R. S. C., Ord. XL., rule* 8 *or* 9 (*m*), *to serve the notice of motion and set down the action, add:*] And take also notice, that special leave to serve this notice of motion and to set down the action thereon has been obtained from the Master of the Rolls [*or as may be*].

824.

Memorandum to be indorsed on copy notice of motion.

(2.) *Setting down the Action on Motion for Judgment* (*n*).

[*Same as* No. 756 *ante.*]

825.

Notice of having set down the action on motion for judgment (*o*).

Formal parts: see ante No. 21.

Take notice that I have this day set down this action on motion for judgment.

826.

Affidavit of service thereof.

[*Same as* No. 741 *ante.*]

(*l*) See R. S. C. Ord. XL. 2, and *supra*, note (*k*).

(*m*) See *ante* No. 819, note (*b*); No. 820, note (*e*).

(*n*) Motions for judgment are not brought on as ordinary motions, but are set down in the cause book; Registrar's notice of April, 1876. They are set down with the Registrar of the Chancery Division; or, if proceeding in a district registry, with the district registrar; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 64; R. S. C. Ord. XXXV. 1 (R. S. C. June, 1876, rule 12); Seton, ed. 4, pp. 39, 40. The present practice is to serve notice of motion for judgment before setting down the action on the motion, and a copy of the notice of motion must be produced to the Registrar on setting down; Seton, ed. 4, p. 39. As to the time within which the action must be set down on motion for judgment, see R. S. C. Ord. XL. 2, 3, 7, 9, and note (*b*) to No. 818 *ante.*

(*o*) This notice is required to be given by R. S. C. Ord. XL. 2, 3, 7.

827. Certificate that motion is fit to be heard as "short" (*p*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

I certify that the motion for judgment in this action is fit to be heard as short.

Dated —— day of ——, 187—.

X. Y.,
Counsel for the plaintiff [*Or*, defendant.]

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828. Notice that the motion has been marked as "short" (*q*).

Formal parts: see ante No. 21.

Take notice, that the motion for judgment in this action has been marked for hearing as short in the Registrar's Book of Causes.

Dated —— day of ——, 187—.

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829. Certificate that action compromised.

[*Same as* No. 765 *ante, substituting the words* "for hearing on motion for judgment" *for the words* "for trial."]

(*p*) Motions for judgment may be marked short on the production of counsel's certificate, and will then be placed in the paper on the first short cause day after the day for which notice is given; Registrar's notice of April, 1876. It seems to be the proper course to bring on short actions for hearing on motion for judgment, as no pleadings ought in general to be delivered in such actions, and thus no notice of trial can be given; R. S. C. Ord. XXXVI. 3; *Taylor* v. *Duckett*, W. N. (1875), 193; *Green* v. *Coleby*, 1 Ch. D. 693; *supra*, note (*a*) at p. 449. As to marking actions as short, see note (*d*) to No. 758 *ante*.

(*q*) As to this notice, see note (*c*) to No. 759 *ante*. Where the notice of motion contains a notice of the intention to mark the motion as short as in No. 821 *ante*, no further notice is necessary; Registrar's notice of April, 1876.

(3.) *The Brief.*

830. Brief on hearing of motion for judgment (*r*).

(1) Contents.

187—. B. No. .

(1) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.
Brief for the plaintiff [*Or*, defendant].
Observations.
[*Here copy any necessary and proper observations.*]

[*Fold the brief longways and indorse it thus :*]

(2) Indorsement.

(2) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
(Short Cause.)
Brown *v.* Dobinson. } Brief on the hearing of the plaintiff's [*Or*, defendant's] motion for judgment.
For the [*Continue as in* No. 772 *ante*].

(4.) *Advancing and Postponing the Hearing.*

831. Consent to motion being prematurely heard (*s*).

[*Same as* No. 774 *ante, substituting the words* "the motion for judgment in this action" *for the words* "this action."]

832. Notice of motion to advance hearing (*t*).

[*Same as* No. 775 *ante, substituting the words* "the motion for judgment in this action" *for the words* "this action."]

(*r*) The brief will consist of a copy of the pleadings (if any) in the action, of any evidence which may have been filed in support of or in opposition to the motion, of such exhibits and other documents as may be necessary (see note (*s*) to No. 772), and of any necessary and proper observations.

(*s*) Except by consent the motion will not be placed in the paper for hearing before the day named in the notice of motion. As to the day to be named in the notice, see note (*g*) to No. 821 *ante*.

(*t*) See Dan. Pr. 835, 836.

833. Consent to adjournment of hearing (*u*).

[*Same as* No. 776 *ante, substituting the words* "the motion for judgment in this action" *for the words* "this action."]

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834. Notice of motion that hearing may be postponed (*v*).

[*Same as* No. 777 *ante, substituting the words* "the motion for judgment in this action" *for the words* "this action."]

(5.) *The Hearing of the Motion* (*w*).

Section II.—Forms of Judgment.

835. Judgment in default of appearance.

[*See ante* Nos. 350, 352—354, 357, 376, 377, 379, 380, 382, 383.]

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836. Judgment in default of defence.

[*See ante* Nos. 523—525, 528, 530, 532, 534—536.]

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837. Judgment where order made under R. S. C. Ord. XIV.

[*Same as* No. 395 *ante.*]

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838. Judgment for costs on payment of money into Court by defendant.

[*Same as* No. 399 *ante.*]

(*u*) See note (*x*) to No. 776 *ante.*

(*v*) See Dan. Pr. 838, 839.

(*w*) Upon the hearing of the motion for judgment the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit; R. S. C. Ord. XL. 10. For forms of judgment on motion for judgment, see *post* Nos. 845 to 851.

839.
Judgment for costs on confession of defence.

[*Same as* No. 497 *ante.*]

840.
Judgment for costs on notice to discontinue.

[*Same as* No. 546 *ante.*]

841.
Judgment at trial of action before a Judge without a jury (*a*).

—— day of ——, 187— [*Date*].
187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D. and E. F. . . . Defendants.

This action coming on for trial (the —— day of ——, 187—, and) this day before this Court in the presence of counsel for the plaintiff and the defendants,

[*If any of the defendants do not appear, say:*] for the plaintiff and the defendant C. D., no one appearing for the defendant E. F., although he was duly served with notice of trial as by the affidavit of ——, filed the —— day of ——, 187—, appears,

upon reading the probate of the will of ——, the affidavit of the defendant C. D., in answer to interrogatories, the admissions in writing dated ——, and signed by the solicitors for the plaintiff and the defendant C. D., and the exhibits marked K. and L., produced to W. on his examination, taken orally before this Court this day, and upon hearing the evidence of the said W. and of ——, upon their examination, taken orally before this Court this day, and what was alleged by counsel on both sides [*Or*, for the plaintiff and the defendant C. D.]: This Court doth declare, &c. And this Court doth order and adjudge, &c.

842.
Judgment at trial of action before a Judge with a jury (*b*).

Formal parts: as in No. 841 *ante.*

This action having on the 12th & 13th days of November, 187—, been tried before the Honourable Mr. Justice —— and a special

(*a*) See R. S. C. App. (D), form 4; Seton, ed. 4, p. 15, No. 1. For other forms, see Seton, ed. 4, p. 15, No. 2; p. 389, No. 1.

(*b*) See R. S. C. App. (D), form 5.

[*Or*, common] jury of the county of ——, and the jury having found [*State findings as in the Associate's certificate*], and the said Mr. Justice —— having ordered that judgment be entered for [*State what judgment the Judge directed to be entered, as in Associate's certificate*]. Therefore it is adjudged that

the plaintiff recover against the defendant £—— and £—— for his costs of action. *Or*,

the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £—— for his costs of defence.

Or as may be, according to the Associate's certificate.

843.

Judgment at trial of action before a referee (*c*).

Formal parts: as in No. 841 *ante.*

This action having on the 27th day of November, 187—, been tried before X. Y., esquire, an official [*Or*, special] referee; and the said X. Y. having found [*State substance of referee's certificate*], it is this day adjudged that [*State the judgment in accordance with the referee's certificate; see* No. 842 *ante.*]

844.

Judgment after trial in the County Court (*d*).

Formal parts: as in No. 841 *ante.*

This action having on the 27th day of November, 187—, been tried in the County Court of ——, holden at ——, pursuant to an order of the Master of the Rolls [*or as may be*], dated the —— day of ——, 187—. And the Judge of the said County Court having found [*Here state the substance of the Registrar's certificate*], it is this day adjudged that [*State the judgment in accordance with the Registrar's certificate; see* No. 842 *ante*].

845.

Judgment upon motion for judgment (*e*).

Formal parts: as in No. 841 *ante.*

Upon motion for judgment this day made unto this Court by counsel for the plaintiff [*or as may be*], and upon hearing counsel for the defendant [*or as may be*], this Court doth order and adjudge, &c.

(*c*) See R. S. C. App. (D), form 6; but see *Longman* v. *East*, 26 W. R. 183; note (*a*) at p. 409, and note (*z*) at p. 431 *ante*.

(*d*) See 19 & 20 Vict. c. 108, s. 26; *Scutt* v. *Freeman*, 2 Q. B. D. 177; note (*a*) at p. 444 *ante*.

(*e*) See Seton, ed. 4, p. 38, No. 1.

846.
Judgment upon motion for judgment under Ord. XXIX. 10, where defendant has not appeared (*f*).

Formal parts: as in No. 841 *ante.*

Upon motion for judgment on the default of the defendant in delivering a defence this day made unto this Court by counsel for the plaintiff, and upon reading an affidavit of ——, filed the —— day of ——, 187—, of due service of the writ of summons in this action on the defendant on the —— day of ——, 187—, the plaintiff's statement of claim in this action, having the certificate of the plaintiff's solicitor indorsed thereon, showing that the defendant has not delivered a defence, the certificate of the Record and Writ Clerk [*Or*, of the Registrar of the District Registry at ——], of no appearance having been entered by the defendant, that the said statement of claim was filed on the —— day of ——, 187—, and that notice of the said motion was filed on the —— day of ——, 187—, and [*Here enter further evidence, if any*] This Court doth order and adjudge, &c.

847.
Judgment upon motion for judgment under Ord. XXIX. 10, where defendant has appeared (*g*).

Formal parts: as in No. 841 *ante.*

Upon motion for judgment on the default of the defendant in delivering a defence this day made unto this Court by counsel for the plaintiff, and upon reading the plaintiff's statement of claim in this action, having the certificate of the plaintiff's solicitor indorsed thereon, showing that the defendant has not delivered a defence, an affidavit of ——, filed the —— day of ——, 187—, of service of notice of the said motion on the defendant, and [*Here enter further evidence, if any*] This Court doth order and adjudge, &c.

848.
Judgment on motion for judgment under Ord. XXIX., 11 (*h*).

Formal parts: as in No. 841 *ante.*

This action coming on for trial this day before this Court against the defendant C. D. in the presence of counsel for the plaintiff and the said defendant C. D., and counsel for the plaintiff this day also moving for judgment on default of the defendant E. F. in delivering a defence, upon hearing the pleadings in this action [*Here enter further evidence; for the evidence of the default of the defendant E. F. see* No. 846 *or* No. 847 *ante*], and what was alleged by counsel for the plaintiff and defendant C. D. This Court doth order and adjudge, &c.

(*f*) See Seton, ed. 4, p. 38, No. 2.
(*g*) See Seton, ed. 4, p. 38, No. 3.
(*h*) See Seton, ed. 4, p. 38, No. 4.

849.
Judgment on motion for judgment after trial of issues of fact (*j*).

Formal parts: as in No. 841 *ante.*

The questions [*Or*, issues] of fact arising in this action [*If directed to be tried by an order, add:*] by the order dated the —— day of ——, 187—, ordered to be tried before [*State whom, as in the order*], having on the —— day of ——, 187—, been tried before [*State whom*] accordingly, and the jury [*or as may be*] having found [*State the findings, as in the Associate's or Referee's certificate*]; now upon motion for judgment this day made unto this Court by counsel for the plaintiff [*Or*, defendant], and upon hearing counsel for the defendant [*Or*, plaintiff], and upon reading the said order and the certificate of the Associate [*Or*, of the said Mr. ——], dated the —— day of ——, 187— This Court doth order and adjudge, &c.

850.
Judgment upon motion under Ord. XL. 3 (*k*).

Formal parts: as in No. 841 *ante.*

This action having on the —— day of ——, 187—, been tried before [*State whom*], and the jury [*or as may be*] having found [*State the findings as in the certificate of the Associate or Referee*], and the Judge [*Or*, the said Mr. ——] not having thought fit to order any judgment to be entered; now upon motion for judgment this day made unto this Court by counsel for the plaintiff [*Or*, defendant], and upon hearing counsel for the defendant [*Or*, plaintiff], and upon reading the certificate of the Associate [*Or*, of the said Mr. ——], dated the —— day of ——, 187— This Court doth order and adjudge, &c.

851.
Judgment upon motion for judgment under Ord. XL. 2, 4, 5 (*l*).

Formal parts: as in No. 841 *ante.*

This action having on the —— day of ——, 187—, been tried before [*State whom*], and the jury [*or as may be*] having found [*State the findings as in the Associate's or Referee's certificate*], and the Judge [*Or*, the said Mr. ——] having ordered that judgment be entered for [*State what, as in the Associate's or Referee's certificate*],

[*If so, add:*] subject to leave to the plaintiff [*Or*, defendant] to move to set aside such judgment;

Now upon motion this day made unto this Court by counsel for the plaintiff [*Or*, defendant] to set aside such judgment, and to enter judgment for [*State what, as in the notice of motion*], and upon hearing counsel for the defendant [*Or*, plaintiff] and upon reading the certificate of the Associate [*Or*, of the said Mr. ——], dated the —— day of ——, 187— This Court doth order and adjudge, &c.

(*j*) See Seton, ed. 4, p. 394, No. 7; see also *Ibid.*, p. 389, No. 2.
(*k*) See Seton, ed. 4, p. 394, No. 6.
(*l*) See Seton, ed. 4, p. 394, No. 6; *Ibid.*, p. 395, No. 8.

Section III.—Entry of Judgment (*a*).

(*a*) Except where the judgment has been pronounced by the Court in the Chancery Division, the judgment will be prepared by the party or his solicitor. For forms, see *ante* No. 635 *et seq.* In this case, the party or his solicitor must produce to the proper officer two copies of the judgment, a copy of the whole of the pleadings in the action, except of any pleading of which a copy has already been delivered on entering any previous judgment in the action, and the affidavit, notice, order, certificate, report, return, award, or other document showing the right of the party to enter the judgment; this document will be examined by the officer, and if it be regular and contain all that is by law required, he will proceed to enter the judgment: R. S. C. Ord. XLI. 1, 4, 5. Where the judgment is pronounced by the Court or a Judge in Court, the entry of the judgment will be dated as of the day on which such judgment is pronounced, and the judgment will take effect as from that date; in other cases the judgment will be dated as of, and take effect from, the day on which the requisite documents are left with the proper officer for the purpose of entry; R. S. C. Ord. XLI. 2, 3. When the action is proceeding in London the judgment is entered by the Registrar of the Chancery Division; but where it is proceeding in a district registry, the judgment must be entered there; R. S. C. Ord. XXXV. 1 (R. S. C. June, 1876, rule 12.) Where such a judgment is entered in London, the course of proceeding is as follows: the party or his solicitor files a copy of the pleadings, if any, in the action in the Record and Writ Clerk's office, where a memorandum of such filing is made on the judgment; the copies of the judgment, and the document upon which judgment is entered, are then taken to the clerk at the order of course seat in the Registrar's office, by whom the documents are examined, and if found correct the copies of the judgment are marked as examined; the Registrar of the day for signing certificates of sale and transfer will then pass the judgment by putting his initials to it and affixing his seal to the duplicate, and the judgment will then be entered at the entering seat, the duplicate being left with the entering clerk; Seton, ed. 4, p. 12. When the judgment is pronounced by the Court in the Chancery Division, a note thereof is made by the Registrar in attendance, by whom a draft of the judgment is afterwards prepared and copies thereof issued to the solicitors of the parties; this draft is afterwards settled by the Registrar in the presence of the parties, and the judgment is afterwards passed by him, also in their presence; the judgment is then entered by the entering clerk to the Registrar, and if the action is proceeding in a district registry, an office copy of the judgment must be transmitted to such district registry to be filed with the proceedings in the action; R. S. C. Ord. XXXV. 2. The judgment will be dated as of, and take effect from, the day on which it was pronounced; R. S. C. Ord. XLI. 2. As to the practice on drawing up, passing and entering a judgment pronounced in Court in the Chancery Division, see Dan. Pr. 869—879; Cons. Ord. L. 17—33; note (*b*) to No. 852 *post;* before the judgment is passed, a copy of the pleadings in the action must be filed with the Record and Writ Clerk or district registrar, and a memorandum of such filing made on the engrossment of the judgment; Seton, ed. 4, p. 33. On entering a judgment a fee is payable of 10*s.* on the lower scale and £1 on the higher scale; Ord. as to Court Fees, Oct. 1875, Sched.; Wilson, 506; this fee is payable by means of a stamp impressed upon or adhesive to the judgment; Ord. as to Fees, April, 1876,

852. Registrar's appointment to settle draft of, or to pass, a judgment (*b*).

Chancery Registrars' Office, Chancery Lane,
——, 187—.

A. *v.* B.

[*Or*, In the Matter of A.]

I have appointed ——, the —— day of ——, 187—, at —— o'clock in the forenoon, to settle the draft of [*Or*, to pass] the judgment [*Or*, order] pronounced in this action [*Or*, matter] by (the Master of the Rolls) on the —— day of ——, 187—.

C. D., Registrar.

Sched. ; Wilson, 522. Where a judgment is made by consent, and the consent is given by mistake, such consent may, before the judgment is passed and entered, be withdrawn, and an application made to the Court to have the judgment varied ; *Holt* v. *Jesse*, 3 Ch. D. 177 ; *A.-G.* v. *Tomline*, 7 Ch. D. 388 ; *Rogers* v. *Horn*, 26 W. R. 432 ; for form of application, see *post* No. 854 ; but after a judgment by consent has been passed and entered, it cannot be varied on the ground of mistake, except for reasons sufficient to set aside an agreement ; *A.-G.* v. *Tomline*, 7 Ch. D. 388.

(*b*) For this form, see Cons. Ord. I. 29. Where the judgment is pronounced by the Court in the Chancery Division, one of the parties must within seven days after the judgment is pronounced, bespeak the judgment and leave with the Registrar's clerk his counsel's briefs, and such other documents as are necessary (for a list of which, see Dan. Pr. 870—873) ; Cons. Ord. I. 20, 21, 22 ; the draft of the judgment will be delivered out to such party, and with it an appointment in writing of a time for settling the same ; *Ibid.*, 23 ; a copy of the appointment must be served upon the opposite party one clear day before the time named therein, by being left at the address for service of such party, or being sent by post to him there ; *Ibid.*, 24, 25 ; the party served must attend the appointment and produce to the Registrar his counsel's briefs, and such other documents as may be necessary ; *Ibid.*, 24 ; if he fails to do so the Registrar may proceed in his absence, and may dispense with the production of counsel's briefs, or he may require the matter to be mentioned to the Court ; *Ibid.*, 28. At the time fixed for settling the draft, the appointment with a memorandum of service indorsed thereon must be produced to the Registrar, who may require the service to be proved by affidavit ; *Ibid.*, 26 ; for form of affidavit of service, see *ante* No. 741. The Registrar may adjourn the appointment to such time as he may think fit, and the parties attending the appointment must attend the adjournment without further notice ; *Ibid.*, 31. When the draft judgment has been settled, the Registrar must name a time in the presence of the parties, or else deliver out an appointment in writing of a time for passing the judgment ; *Ibid.*, 27. In the latter case the appointment must be served, and the service thereof proved in the manner above mentioned ; *Ibid.*, 27 ; and if any party fails to attend the appointment, the Registrar may proceed in his absence ; *Ibid.*, 28. In any case, however, in which he thinks proper to do so, the Registrar may settle and pass the judgment without making any appointment for the purpose and without notice to any party ; *Ibid.*, 32. When the judgment is passed by the Registrar, it will be entered by the entering clerk in a book kept for the purpose ; Cons. Ord. I. 18 ; R. S. C. Ord. XLI. As to filing a copy of the pleadings in the action, see note (*a*) at p. 462.

853.
Notice of motion for counsel's brief to be produced within a limited time (*c*).

Formal parts: see post No. 1571.
on the part of the plaintiffs, that unless the defendant A. B., or his solicitor, do, on or before the —— day of ——, produce to the Registrar the brief of the counsel for the said defendant A. B., on the trial of this action [*or as may be*] the Registrar may be ordered to draw up the judgment in this action without the production of such brief.

854.
Notice of motion to vary minutes (*d*).

Formal parts: see post No. 1571.
on the part of the plaintiff [*Or*, defendant A. B.], that the minutes of the judgment [*Or*, order] pronounced in this action by his lordship the Master of the Rolls [*or as may be*] on the —— day of ——, 187—, as given out by the Registrar, may be varied or altered in the respects following, namely: [*Specify the particular matter to be added, or altered*].

855.
Notice of motion to return engrossment of judgment or order (*e*).

Formal parts: see post No. 1571.
on the part of the plaintiff, that Mr. A. B., the solicitor in this cause for the defendant C. D. [*or as may be*], may be ordered, within —— days, to produce to, and leave with, E. F., esquire, one of the Registrars of the Supreme Court, the engrossment prepared in the office of the said Registrar of the judgment [*Or*, order] pronounced in this action by his lordship the Master of the Rolls [*or as may be*], on the —— day of ——, 187—: to the intent that the same may be duly passed and entered; and that the said A. B. may be ordered to pay the costs of this application.

856.
Motion paper to enter judgment or order *nunc pro tunc* (*f*).

Formal parts: see post No. 1570.
To move on behalf of the plaintiff [*or as may be*], that the judgment [*Or*, order] pronounced in this action [*Or*, matter] by the Master of the Rolls [*or as may be*], dated the ——, 187—, and which has been passed by the Registrar, but not yet entered, may be entered *nunc pro tunc*.

(*c*) See *Yeatman* v. *Read*, 14 W. R. 123, V. C. K.; and see Cons. Ord. I. 28; note (*b*) to No. 852 *ante*.

(*d*) See Dan. Pr. 874, 875. The notice must specify the particular alteration desired; *Ibid.* Notice of the application should be given to the Registrar; *Ibid.*

(*e*) See Dan. Pr. 876.

(*f*) As to the time within which a judgment must be entered, see Dan. Pr. 877. An order to enter a judgment *nunc pro tunc*, may be obtained on motion of course, or petition of course, at the Rolls, and when obtained, must be produced to the entering clerk at the Registrar's office as his authority to enter the judgment; *Ibid.*, 878.

857. Petition of course for the like (*f*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. A judgment [*Or*, An order] pronounced in this action [*Or*, matter] by your lordship [*or as may be*] on the —— day of ——, 187—, has been passed by the Registrar.

2. By inadvertence [*or other ground*], the said judgment [*Or*, order] has not yet been entered in the Registrar's book; and the time limited for entering the same has expired.

Your petitioner therefore humbly prays, that the said judgment [*Or*, order] may be entered *nunc pro tunc*.

And your petitioner will ever pray, &c.

Section IV.—Rectifying and Adding to Judgments.

858. Notice of motion or summons to rectify a judgment or order (*h*).

Formal parts: see post No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that the judgment pronounced [*Or*, the order made] in this action on the —— day of ——, 187—, may be rectified or corrected in the respect following; namely: [*Here specify the corrections desired*].

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859. Special petition for the like (*h*).

Formal parts: see post No. 1578.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. By the judgment pronounced [*Or*, By an order made] in this action, dated the —— day of ——, 187—, it was adjudged [*Or*, ordered] that [*Recite so much of the judgment or order as is material to the subject-matter of the petition*].

2. The said judgment [*Or*, order] has been duly entered in the Registrar's book.

3. Since such entry was made your petitioner has discovered that the said judgment [*Or*, order] omits to [*State omission desired to be rectified*].

Your petitioner therefore humbly prays that the said judgment [*Or*, order] may be rectified or corrected by [*State in what respect*].

Or that [*Conclude as in* No. 1578 *post, and add foot note* No. 1579].

(*f*) See note (*f*) to No. 856 *ante*.

(*h*) As to the alterations which may be made in a judgment after entry thereof, upon application in a summary way, and without a re-trial, see Dan.

860.

Summons for additional accounts and inquiries (*j*).

Formal parts: see post No. 881.

on the part of the plaintiff [*Or*, of the defendant C. D.; *Or*, of E. F., who by an order dated the —— day of ——, 187—, has liberty to attend the proceedings; *or as may be*], that in addition to the accounts and inquiries directed by the judgment dated the —— day of ——, 187—, the following accounts and inquiries may be directed to be taken and made; that is to say: [*Set them out in paragraphs numbered consecutively in continuation of the numbers in the judgment; as thus:*]

11. An account of, *&c.*

12. An inquiry whether, *&c.*

Pr. 888—891, and Cons. Ord. XXIII. 21. The application is by motion or special petition; Cons. Ord. XXIII. 21; or, if the defective order has been made at Chambers, by summons; Dan. Pr. 889, note (*r*).

(*j*) Where in the prosecution of a judgment it appears to the Judge that it would be expedient that further accounts should be taken or further inquiries made, he may order the same to be taken and made accordingly; Cons. Ord. XXXV. 19. As to what further accounts and inquiries may be thus added, see Dan. Pr. 1089. A person served with notice of a judgment under 15 & 16 Vict. c. 86, s. 42, rule 8, or under 31 & 32 Vict. c. 40, s. 9, may within one month after such service, apply to the Court to add to the judgment; 15 & 16 Vict. c. 86, s. 42, rule 8; 31 & 32 Vict. c. 40, s. 9; Cons. Ord. XXIII. 18; *ante* Nos. 36, 37, 38, and notes thereto.

Section V.—Registration of Judgments (*a*).

861.
Memorial of judgment for registration in Middlesex or Yorkshire (*b*).

A memorial to be registered of

A judgment [*Or*, An order] of Her Majesty's High Court of Justice dated the —— day of ——, 187—, and made in an action there depending, wherein A. B., of [*address and description*], is plaintiff, and C. D., of [*address and description*], is defendant, whereby it was adjudged [*Or*, ordered] that [*Here recite the judgment or order; as thus:*] the said A. B. should recover against the said C. D. the sum of £—— together with costs, which said costs were afterwards taxed and allowed by one of the taxing masters of the said Court at the sum of £——.

862.
Certificate of Record and Writ Clerk (*c*).

I certify that judgment was entered in the above action on the —— day of ——, 187—.

X. Y.
Clerk of Records and Writs.

863.
Affidavit verifying signature.

I, E. F., of [*address and description*], make oath and say that I was present and did see X. Y., esquire, one of the Clerks of Records and Writs in the Chancery Division of the High Court of Justice, sign the certificate of the judgment in the memorial above mentioned.

(*a*) It is no longer necessary to register judgments under the acts relating to judgments; 27 & 28 Vict. c. 112, s. 3; nor does any advantage appear to be gained by such registry. Where, however, a judgment or order having the effect of a conveyance, as, for example, a vesting order under the Trustee Act, 1850 (13 & 14 Vict. c. 60), is made respecting land situate in the register county of Middlesex or Yorkshire, or the county of the town of Kingston-upon-Hull, a memorial of the judgment or order must be registered in the prescribed manner; 7 Anne, c. 20, s. 1 (Middlesex); 2 & 3 Anne, c. 4, s. 1 (West Riding); 6 Anne, c. 35, s. 1 (East Riding and Kingston-upon-Hull); 8 Geo. II. c. 36, s. 1 (North Riding). So where a judgment or order for payment of a sum of money is obtained, which it is intended to constitute a charge upon land of the debtor situate in a register county, and to enforce as such, a memorial of the judgment or order must be registered in order to bind a purchaser without notice; 7 Anne, c. 20, s. 18; 5 & 6 Anne, c. 18, s. 4; 6 Anne, c. 35, s. 19; 8 Geo. II. c. 6, s. 1.

(*b*) The memorial must be engrossed on parchment and must bear a 2*s.* 6*d.* stamp.

(*c*) This certificate is written at the foot of the memorial. The signature of the Record and Writ Clerk must be verified; for form of affidavit, see *post* No. 863.

CHAPTER XVI.

PROCEEDINGS IN THE JUDGES' CHAMBERS.

SECTION I.—GENERAL COURSE OF PROCEEDING AT CHAMBERS (*a*).

(1.) *Originating Summonses* (*b*).

(*a*) See Dan. Pr. 1039—1070. As to the power and jurisdiction of the Judges at Chambers, see Dan. Pr. 1039, 1040; 15 & 16 Vict. c. 80, ss. 11—13, 36; Cons. Ord. XXXV. 61, 62; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 39. As to adjournments to or from Chambers, see Dan. Pr. 1040, 1056, 1188; 15 & 16 Vict. c. 80, s. 27; Regul. 8 Aug. 1857, rule 3; and see *post* No. 1191. As to the business to be disposed of at Chambers, see Dan. Pr. 1040—1042; 15 & 16 Vict. c. 80, s. 26; 18 & 19 Vict. c. 134, s. 16; Cons. Ord. XXXV. 1; R. S. C. Ord. LIV. 1. As to appeals from the Judge in Chambers, to the Court of Appeal, see *post* note (*a*) at p. 780. An order made in Chambers may be enforced in the same manner as a judgment; R. S. C. Ord. XLII. 20. As to the mode of enforcing it, see *post* note (*a*) at p. 687. As to the practice where the prosecution of proceedings at Chambers is delayed, see Dan. Pr. 1048; Cons. Ord. XXXV. 23; and see 15 & 16 Vict. c. 80, ss. 7—9, 37. If so directed by the Court or a Judge (but not otherwise) accounts may be taken, and inquiries made, and sales carried out, in the office of or by a District Registrar; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66; *Irlam* v. *Irlam*, 2 Ch. D. 608; *Re Smith, Hutchinson* v. *Ward*, 6 Ch. D. 692; *McDonald* v. *Foster*, 6 Ch. D. 193; it is a matter for the discretion of the Judge whether he will order such proceedings to be prosecuted in a District Registry or not, and with such discretion the Court of Appeal will not interfere; *McDonald* v. *Foster*, 6 Ch. D. 193. Proceedings will not be ordered to be prosecuted in a District Registry, if it appear that needless expense will be thereby occasioned; *Walker* v. *Robinson*, 24 W. R. 427; and see *McDonald* v. *Foster*, *ubi supra*. As to appeals from, and references by, a District Registrar to the Judge, see R. S. C. Ord. XXXV. 6, 7, 10; *ante* note (*d*) to No. 210.

(*b*) As to summonses generally, see Dan. Pr. 1050—1055; 15 & 16 Vict. c. 80, s. 28; Cons. Ord. XXXV., and Sched. K. Nos. 1—3. As to the different classes of summonses, see Dan. Pr. 1050, note (*y*). The general rules as to the persons by (Dan. Pr. 4—45, 46—119), and against (*Ibid.*, 120—171), whom a suit may be instituted, the parties to a suit (*Ibid.*, 172—257), the authority to institute proceedings (*Ibid.*, 259—264), including the authority of a next friend to use his name (*Ibid.*, 67, 104, 260), and the names and addresses of plaintiffs and next friends (*Ibid.*, 299—302), apply to proceedings commenced by summons, as well as to actions commenced by

[*Same as* No. 946 *post.*]

864. Summons to administer an estate (*c*).

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865. Formal parts of a summons to originate any other proceeding (*d*).

In the High Court of Justice,
Chancery Division (*e*).
[*Name of Judge* (*f*).]

187—. B. No. (*g*).

[*Set out the title of the proposed matter, as thus :*]

In the matter of A. B., an infant, by C. D., his next friend [*Or,* of A. B., a person of unsound mind not so

writ ; see *ante* Chaps. I. & II. As to applications to stay proceedings, or take a summons off the file, see *post* Nos. 1772, 1773. For the practice as to preparing, issuing, and serving originating summonses and filing duplicates, and sealing copies for service, see Dan. Pr. 1050, *et seq.* The duplicate must be written on paper of the same description and size as that on which proceedings are printed ; Ord. 6 Mar. 1860, rule 16. As to such paper, see R. S. C. Ord. LVI. 2 ; *ante* note (*a*) to No. 210. Suits commenced by administration summonses are entered in the cause books kept by the Clerks of Records and Writs, by the name of the person whose estate is to be administered, and are distinguished by the year, letter, and number, in like manner as other causes. Other summonses originating proceedings in Chambers duplicates whereof have been filed in the Record and Writ Clerk's office, are entered in the cause books under the leading title of the matter, and are distinguished by the like reference. As to the reference to the record, see *ante* note (*c*) to No. 210. On sealing an originating summons, a fee is payable of 10*s.* on the higher scale and 5*s.* on the lower scale ; on sealing a duplicate thereof, a fee is payable of 5*s.* on the higher scale and 1*s.* on the lower ; and on sealing a copy for service, a fee is payable of 5*s.* on the higher and 1*s.* on the lower scale ; Ord. as to Court Fees, Oct. 1875, Sched. ; Wilson, 506. These fees are payable by stamp impressed upon, or, in the case of copies for service, adhesive to the summons, duplicate, or copy ; Ord. as to Fees, April, 1876, Sched. ; Wilson, 522. For forms of order on an originating summons, see Seton, ed. 4, pp. 60, 61, Nos. 3, 4, 5. For the practice as to drawing up, passing, and entering such orders, see *ante* Nos. 852—857, and notes thereto. As to appealing from such orders, see *post* note (*a*) at p. 780. As to enforcing such orders, see *post* note (*a*) at p. 687.

(*c*) See notes to No. 946 *post.*

(*d*) See note (*b*) at p. 468 *supra* ; Dan. Pr. 1050 *seq.* ; Cons. Ord. XXXV. 2, and Sched. K, No. 1.

(*e*) Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11 ; R. S. C. Ord. V. 4.

(*f*) Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 33, 42 ; R. S. C. Ord. V. 4, 4*a* (R. S. C. June, 1877) ; *ante* note (*c*) to No. 210. No cause or matter may until further order be assigned to Mr. Justice Fry ; Ord. of the L. C. June, 1877, note (*c*) to No. 210 *ante.*

(*g*) As to the reference to the record, see note (*c*) to No. 210 *ante,* and note (*b*) at p. 468 *supra.*

found, by C. D., his next friend ; *Or*, of A. B., the wife of C. B., by E. F., her next friend ; *or as may be*].

Let all parties concerned attend at my Chambers [*State where ; as :*] in the Rolls Yard, Chancery Lane, Middlesex, on —— day, the —— day of ——, 187—, at —— of the clock in the —— noon, on the hearing of an application on the part of [*State on whose behalf the application is made* (*j*)] that [*State the precise object of the application ; as thus :*] the £—— cash in Court to the credit of this matter may be paid to the applicant.

Dated this —— day of ——, 187—.

George Jessel, Master of the Rolls.

Or,

——, Vice-Chancellor.

This summons was taken out by A. & B., of Lincoln's Inn, in the county of Middlesex, solicitors for the applicant [*or as may be* (*l*)].

[*Where service of the summons is necessary* (*ll*), *address it to the parties required to be served* (*m*), *and add foot note ; as thus :*]

To the above named C. D., and E. F. [*Or*, To C. D., of [*residence and addition*], and E. F., of, *&c.*].

Foot note (*ll*).

NOTE.—If you do not attend, either in person or by your solicitor, at the time and place above mentioned,

[*Or, if the return day of the summons is altered* (*see post* No. 866), *say :*] at the place above mentioned, at the time mentioned in the indorsement hereon,

such order will be made, and proceedings taken, as the Judge may think just and expedient.

866.

Note of enlargement of return of an originating summons (*n*).

(Wednesday), the —— day of ——, 187—, at —— of the clock in the ——noon, is appointed for such of the parties as have not been served with this summons to attend at my Chambers within mentioned.

Dated this —— day of ——, 187—.

George Jessel, Master of the Rolls [*or as may be ; see ante* No. 865].

(*j*) As to the description of the applicant, see note (*t*) to No. 881 *post*.

(*l*) The summons must be underwritten with the name and place of business of the solicitor issuing it, and of his agent, if any : or with the name and place of residence of the applicant, where he acts in person ; and, in either case, with the address for service, if any ; Cons. Ord. III. 2, 5 ; Dan. Pr. 378, 379. For other forms, see *ante* Nos. 94, 95.

(*ll*) If the application is to be made *ex parte*, the foot note, as well as the address, should be omitted ; see Dan. Pr. 1050, note (*b*).

(*m*) Every summons should be addressed to the parties themselves, and not to their solicitors ; Dan. Pr. 1050.

(*n*) See Dan. Pr. 1052 ; Cons. Ord. XXXV. 8. The indorsement is made on the original summons, and on each copy stamped for service, and it must be sealed at the Judges' Chambers ; *Ibid.* As to the variation required, in such case, in the foot note to the summons, see *ante* No. 865. The indorse-

867.
Summons to amend an originating summons (*p*).

Formal parts: see post No. 881.
on the part of the plaintiff [*or as may be*], that the original summons, dated the —— day of ——, 187—, issued from and under the seal of my Chambers, and the duplicate of the said summons, filed on the —— day of ——, 187—, may be amended as follows; namely: [*State the proposed amendment; as thus:*] by adding A. B., of [*residence and addition*], as a co-applicant.

868.
Direction to amend duplicate summons, without a formal order (*r*).

Let the duplicate be amended, as within.

R. M.
Chief Clerk.

869.
Præcipe on sealing or resealing for service, a copy of an originating summons (*s*).

In the High Court of Justice,
Chancery Division.
[*Reference to the record.*]
[*Short title.*] Seal [*Or,* Re-seal] one copy [*Or,* —— copies] of summons for service.
Dated this —— day of ——, 187—.
[*Name, &c., of solicitor or party presenting the copy to be stamped, as in* No. 92 *ante.*]

870.
Summons for substituted service of an originating summons (*t*).

Formal parts: see post No. 881.
on the part of the plaintiff [*or as may be*], that service of the summons, dated the —— day of ——, 187—, issued in this matter [*Or,* matter and cause], from and under the seal of my Chambers,

ment need not be made on the duplicate summons filed at the Record and Writ Clerk's office; Braithwaite's Pr. 110. As to altering the return day, without an indorsement, where no service of the summons has been made, see Dan. Pr. 1052; and as to the length of service necessary, see *Ibid.*, 1051; Cons. Ord. XXXV. 7; *Ibid.*, XXXVII. 11.

(*p*) See Dan. Pr. 1053. For orders in like case, see *Re Woollams, Layton* v. *Spicer*, V. C. S. at Chambers, 13 Dec. 1866, Reg. Lib. B. 2537; *Re Wood, Manley* v. *McCauley*, M. R. at Chambers, 5 Aug. 1870, Reg. Lib. B. 2229. As to the mode of amendment, and as to amending summonses without an order, see Dan. Pr. 1052; Regul. 8 Aug. 1857, rule 1.

(*r*) See Dan. Pr. 1053. As to when this direction will be sufficient, without a formal order, see *Ibid.* The direction is written on the original summons, after the amendment thereof at Chambers.

(*s*) See Dan. Pr. 1051, note (*e*). One *præcipe* is sufficient for any number of copies sealed at the same time, and in the same matter; Braithwaite's Pr. 109, 111. As to the fee payable on sealing the copy for service, see note (*b*) at p. 468 *ante*. No further fee is payable on resealing.

(*t*) See Dan. Pr. 1054. For order in like case, see *Wickham* v. *Webster*, V.-C. W. at Chambers, 1 Dec. 1866, Reg. Lib. B. 2430. The application is made *ex parte*; Dan. Pr. 1054. As to substituted service, generally, see *Ibid.*, 370, *et seq.*; and *ante* pp. 138—141.

at the instance of the said applicant, together with a copy of the order to be made hereon, upon [*Describe the proposed substitute; as thus:*]

C. D., of [*residence and addition*],

Or, C. D., and E. F., members of the firm of D. & F., of [*place of business*], or upon either of them,

may be deemed good service on the defendant A. B. [*or as may be.*]

871.

Affidavit in support (*u*).

Formal parts: see ante No. 693.

1. [*Show the necessity for serving a copy of the summons on the person proposed to be served by substitute.*]

2. [*Show what efforts have been made to serve such person with the copy; that all practicable means of effecting such service have been exhausted; and that the proposed substitute has been appointed by such person to act as his agent in the matter, or other special grounds. Show, also, how the substituted service is proposed to be effected.*]

3. [*Show means of knowledge.*]

872.

Summons for leave to serve a summons abroad (*y*).

Formal parts: see post No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to serve a copy of the summons dated [*Continue as in* No. 870 *ante, to* hereon], upon the defendant A. B. [*or as may be*], at [*State where; as thus:*] Vienna, or elsewhere in the empire of Austria.

873.

Affidavit in support (*a*).

Formal parts: see ante No. 693.

1. [*Show the necessity for serving a copy of the summons on the person proposed to be served abroad.*]

2. [*Show in what place or country such person is, or may probably be found.*]

3. [*Show means of knowledge.*]

874.

Affidavit of service of an originating summons (*b*).

Formal parts: see ante No. 693.

1. On ——, the —— day of ——, 187—, before seven of the clock in the evening

Or, two of the clock in the afternoon; *or as may be*,

(*u*) See Dan. Pr. 1054.

(*y*) See Dan. Pr. 1054. The application is made *ex parte*. The summons to be served should be made returnable on a day sufficiently distant to allow of the service abroad, and of the party served communicating with England; see table of times, *ante* note (*m*) to No. 213. As to service abroad, see, generally, Dan. Pr. 373, *et seq.*, and of a writ of summons, see R. S. C. Ord. XI., and *ante* No. 290, and notes thereto.

(*a*) See Dan. Pr. 1054; see also the notes to No. 290 *ante*.

(*b*) See Dan. Pr. 1054; Regul. 8 Aug. 1857, Sched. No. 1. As to the mode of service of an originating summons, see Dan. Pr. 1053. For form of affidavit of having been served with such summons, see *post* No. 876.

of that day (*c*), I served [*Describe the person or persons required to be served*] with a summons in this matter [*Or*, matter and cause], dated the —— day of ——, 187—, issued from, and under the seal of, the Chambers of the Master of the Rolls [*Or*, the Vice-Chancellor Sir Richard Malins; *or as may be*], and addressed to the said [*Names of the persons required, as above, to be served—If so, add:* and others]; by delivering to, and leaving with [*Describe the person or persons on whom, and where, service was effected; see ante* No. 741], a true copy of the said summons, duly stamped with a stamp of the Record and Writ Clerks' office indicating the filing of a duplicate of the said summons at the said office; and I at the same time showed the said summons to the person [*Or*, to each of the persons] to whom such true copy was delivered as aforesaid: by which summons all parties concerned were required to attend at the Chambers aforesaid in the Rolls' Yard, Chancery Lane, Middlesex [*or as may be: as in summons*], on ——, the —— day of ——, 187—, at —— of the clock in the ——noon,

[*In the case of an administration summons, add:*] and show cause, if he [*Or*, they] could, why an order for the administration of the real and personal estate of the above-named E. F., should not be granted [*or as may be: as in the summons*].

[*But in other cases, add:*] on the hearing of an application on the part of [*State whom: as in summons*], for the purposes therein specified.

2. There was at the foot of the copy [*Or*, of each copy] of the said summons so served, and at the foot of the said summons when so produced as aforesaid, a memorandum or statement that such summons was taken out by ——, of ——, solicitor for —— [*Insert these particulars from the summons*]; and a notice that if the said [*Insert name*] did not attend, either in person or by his solicitor, at the time and place mentioned in the said summons,

[*Or, if so:*] at the place mentioned in the said summons, at the time mentioned in the indorsement thereon (*d*),

such order would be made, and proceedings taken, as the Judge might think just and expedient.

[*Where the time for service has been enlarged by indorsement (d), add:*] 3. There was upon the copy [*Or*, upon each copy] of the said summons so served an indorsement, dated the —— day of ——, 187—, under the seal of the Chambers of the said Judge, whereby ——, the —— day of ——, 187—, at —— of the clock in the ——noon, was appointed for such of the parties as had not been served with the said summons to attend at the said Chambers [*or as may be*].

(*c*) As to the hours for service, where personal service is not required, see Dan. Pr. 380; Cons. Ord. XXXVII. 2. The statement as to the hour seems material only where the service is not made until the last day allowed to effect it.

(*d*) See *ante* No. 866.

875. Affidavit of service of an originating summons, on a substitute(*e*).

[*Proceed as in* No. 874 *ante, to* delivering to, *and continue thus:*] and leaving with [*Name of substitute*], at [*State where*], in the (county) of ——, a true copy of the said summons duly [*Continue as in* No. 874 *ante, to the end of that Form.*]

4. The said [*substitute*] is the person of that name who is named in the order made in this cause [*Or*, matter], dated the —— day of ——, 187—, whereby it was ordered that [*Set out directions as to the substituted service*]; and at the time of the aforesaid service on the said [*substitute*], I also served him with the said order of the —— day of ——, 187—, by delivering to, and leaving with him a true copy of such order; and I at the same time produced and showed to him such original order, duly passed and entered.

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876. Affidavit of having been served with a summons.

[*Same as* No. 742 *ante, describing the document served thus:* "a copy of a summons on behalf of the said plaintiff" [*or as may be*] "addressed to" [*State whom*].]

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877. *Præcipe* for appearance to an originating summons (*h*).

In the High Court of Justice,
Chancery Division.

[*Reference to the record.*]

[*Short title.*] Enter an appearance for A. B., to summons at the suit of C. D.

Dated this —— day of ——, 187—.

[*Name, &c., of solicitor or party entering the appearance; as in* No. 92 *ante.*]

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878. Notice of appearance (*i*).

Formal parts: see ante No. 21.

Take notice that I have this day entered an appearance for the defendant A. B. [*or as may be*], to the summons, dated ——, 187—, issued in this matter [*Or*, matter and cause].

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879. Notice that a summons will be attended by counsel (*o*).

Formal parts: see ante No. 21.

Take notice that his lordship the Master of the Rolls [*or as may be*] will be attended by counsel on behalf of the plaintiff [*or as may be*], on the hearing by his lordship of the summons, dated the —— day of ——, 187—, taken out in this cause [*Or*, matter] on behalf of the plaintiff [*or as may be*].

(*e*) As to substituted service of a summons, see *ante* Nos. 870, 871, and notes thereto.

(*h*) See Dan. Pr. 1053; Cons. Ord. XXXV. 9. As to the entry of a conditional appearance to a summons, see Dan. Pr. 1053, note (*f*); and for forms, see *ante* Nos. 300 to 302, and see the notes thereto.

(*i*) See Dan. Pr. 1053; Cons. Ord. XXXV. 9.

(*o*) See Dan. Pr. 1057, note (*f*). As to the attendance of counsel in Chambers, see *Ibid.*, 1056, 1057; and as to the costs of such attendance, *Ibid.*,

880. Notice of new appointment for the further consideration of a summons (*p*).

Formal parts: see ante No. 21.

Take notice that the Chief Clerk of his lordship the Master of the Rolls [*or as may be*] has appointed ——, the —— day of ——, 187—, at —— of the clock in the ——noon, for the further consideration, at the Chambers of the said Judge, of the matter of the application made by the summons dated the —— day of ——, 187—, taken out in this cause [*Or*, matter] on behalf of the plaintiff [*or as may be*].

(2.) *Ordinary Summonses* (*q*).

881. Formal parts of an ordinary summons (*r*).

In the High Court of Justice,
Chancery Division.

[*Title of cause or matter, and reference to the record; as in* No. 865 *ante.*] [Let

1057; Cons. Ord. XL. 29; R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 14. As to allowances to solicitors in respect of their attendance in Chambers, see *Ibid.*, rule 10. As to the costs of attendances in Chambers where any party makes default, see *Ibid.*, rule 11.

(*p*) See Dan. Pr. 1055. As to the attendance upon summonses, continuation of the proceedings by adjournment, and the course where a break occurs in the adjournments, see *Ibid.*; Cons. Ord. XXXV. 14. As to proceeding *ex parte*, re-consideration of *ex parte* proceedings, and awarding costs against absent parties, see Dan. Pr. 1055, 1056; Cons. Ord. XXXV. 10, 11; XL. 31. As to the costs of attendance of parties attending without leave, see Cons. Ord. XL. 28; R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 21.

(*q*) See Dan. Pr. 1050—1055; Cons. Ord. XXXV. 2, and Sched. K, No. 1. Every application, which by the Rules of Court is authorised to be made at Chambers, is to be made by summons in a summary way; R. S. C. Ord. LIV. 1. For lists of applications which may be made by summons, either *ex parte* or upon notice, see Dan. Pr. App. III. For the practice as to preparing and issuing ordinary summonses, see Dan. Pr. 1050. As to the Judge to whom the application should be made, see Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11, subs. 1; R. S. C. Ord. LXI. 6, 7. On issuing the summons, a fee is payable of 3*s.* on the higher scale and 2*s.* on the lower; Ord. as to Court Fees, Oct. 1875, Sched.; Wilson, 506; this fee is payable by a stamp impressed upon or adhesive to the summons; Ord. as to Fees, April, 1876, Sched.; Wilson, 522. As to the service of the summons, see R. S. C. Ord. XIX. 6, 29; Cons. Ord. III. 2, 5; *post* note (*y*) to No. 885. For forms of order on summons, see Seton, ed. 4, 60, 61, Nos. 3, 4, 5. Orders made in Chambers are generally drawn up by the Registrars, except orders for time to plead, and other orders relating to merely interlocutory proceedings, which are drawn up in Chambers; Seton, ed. 4, 61. For the practice as to drawing up, passing, and entering the order, where it is drawn up by the Registrar, see *ante* Nos. 852—857, and notes thereto. As to appealing from orders made in Chambers, see *post* note (*a*) at p. 780. As to enforcing such orders, see *post* note (*a*) at p. 687.

(*r*) See note (*q*) *supra*; Dan. Pr. 1050; Cons. Ord. XXXV. 2, and Sched. K, No. 1.

Let all parties concerned attend at my Chambers [*State where; as:*] in the Rolls' Yard, Chancery Lane, Middlesex, on ——, the —— day of ——, 187—, at —— o'clock in the ——noon,

[*If a short return is granted, add:*] by special leave (*s*),

on the hearing of an application on the part of [*State on whose behalf the application is made* (*t*)], that [*State the precise object of the application.*]

Dated this —— day of ——, 187—.

George Jessel, Master of the Rolls.

Or,

[*Name of Judge*], Vice-Chancellor.

This summons was taken out by A. & B., of Lincoln's Inn, in the county of Middlesex, solicitors for the applicant [*or as may be*].

To [*Insert the names of the solicitors or persons to be served with the summons* (*u*)].

882.

Formal parts of a summons issued at the chambers of one Judge and returnable at the chambers of another Judge (*v*).

In the High Court of Justice,

Chancery Division.

[*Title of cause or matter, and reference to the record; as in* No. 865 *ante.*]

Let all parties concerned attend at [*Name the Chambers open for the transaction of Chancery business in vacation, as thus:*] the Chambers of the Master of the Rolls, in the Rolls' Yard, Chancery Lane, Middlesex, on ——, the —— day of ——, 187—, at —— of the clock in the ——noon, by special leave of the [*Name the Vacation Judge*], on the hearing [*Continue as in* No. 881 *ante, to the end*].

(*s*) See Dan. Pr. 1051, and note (*q*); Cons. Ord. XXXV. 7.

(*t*) The Christian and surnames, or title of honour, or corporate title, of the party on whose behalf the summons is taken out should be here stated; but if the application is made by the sole plaintiff, or all the plaintiffs, or by the sole defendant, or all the defendants, the names need not be set forth. The place of residence and description or addition of the applicant should be stated, if he is not shown to be a party to the suit or proceeding. Where the applicant is under disability, and the application is made by his next friend or guardian, the Christian and surnames of the next friend or guardian should be stated; and if not made in a suit in which he is so acting, his place of residence and description or addition should be shown; as: "the plaintiff John Jones, an infant, by Thomas Styles his next friend"—Or, "the defendant Charles Jones, a person of unsound mind, not so found, by Thomas Styles his guardian"—Or, "Mary Jones, an infant, by Thomas Styles, of Esher, in the county of Surrey, gentleman, her next friend."

(*u*) See note (*l*) to No. 865 *ante.*

(*v*) As to the arrangements for the transaction of the business of the Court and Chambers during vacations, and the power of one Judge, during vacations,

883.
Another form thereof (*w*).

[*Prepare the summons in the common form: see ante* No. 881; *and write the following memorandum in the margin:*]

By permission of the [*Name the Vacation Judge*], this summons is to be attended at the Chambers of the Master of the Rolls, in the Rolls' Yard, Chancery Lane, Middlesex [*or as may be*].

884.
Enlargement of return of summons (*x*).

Adjourned till Wednesday, the —— day of ——, 187—, at —— of the clock in the ——noon, for service on [*State whom; as thus:*] the defendant A. B.

Dated this —— day of ——, 187—.

R. M.
Chief Clerk.

885.
Affidavit of service of summons (*y*).

Formal parts: see ante No. 693.

1. On —— day, the —— day of ——, 187—, before seven of the clock in the evening [*Or*, two of the clock in the afternoon]

to make special orders for another, to sign and adopt the certificates of another Judge's Chief Clerk, and to allow judgment and orders of one Judge to be prosecuted at the Chambers open for the transaction of vacation business; and as to applications to discharge or vary such orders and certificates, see Dan. Pr. 1067—1069; Cons. Ord. VI. 11; XXXV. 58, 59; R. S. C. Ord. LXI. 5—9; as to the period of vacation, see R. S. C. Ord. LXI. 2. The duties of the vacation Judge commence immediately on the rising of the Courts; and his Chambers are open on certain days in every week, during each vacation, for the transaction of pressing business; Dan. Pr. 849, 1067. Notices of such days, and of the mode of communicating with the Judge on matters not entertained at Chambers, are usually set up in the public offices before the commencement of each vacation. The vacation Judge may also act during any interval between the sittings of the Court, although such interval may not be called or known as a vacation; R. S. C. Ord. LXI. 9.

(*w*) See Dan. Pr. 1069; Cons. Ord. XXXV. 58.

(*x*) See Dan. Pr. 1052. The note should be written in the margin of the original summons, and a copy should be written in the margin of each copy for service; *Ibid.* As to altering the return day where no service has been made, see *Ibid.* As to the length of service necessary, see Dan. Pr. 1051; Cons. Ord. XXXV. 7; XXXVII. 11. As to obtaining a short return, see Dan. Pr. 1051, note (*q*); and note (*s*) to No. 881 *ante*.

(*y*) As to the mode of effecting service, see Dan. Pr. 1054; Cons. Ord. III. 4, 6; R. S. C. Ord. XIX. 6. Upon any party for whom no appearance has been entered, the summons may be served by being filed with the Record and Writ Clerk or district registrar; R. S. C. Ord. XIX. 6, 29; *Dymond* v. *Croft*, 3 Ch. D. 512; *Morton* v. *Miller*, 3 Ch. D. 516; in that case the service is proved by the certificate of the officer with whom the summons was filed.

of that day (*z*), I served [*Describe the person or persons required to be served, as thus:*]

A. B., the defendant [*Or*, A. B., one of the defendants] in this cause [*Or*, matter],

Or,

A. B., who, by an order, dated the —— day of ——, 187—, had liberty to attend the proceedings in this cause [*Or*, matter],

Or,

A. B., of [*residence and addition*],

Or,

Mr. C. D., who acts as solicitor [*Or*, agent] in this cause [*Or*, matter] for the plaintiff, *&c.*,

Or,

each of the following persons, that is to say: (1) A. B., one of the defendants in this cause; (2) Mr. C. D., who acts as solicitor in this cause for the plaintiff; and (3) Mr. G. H., who acts as agent in this cause for L. M., who by an order, dated the —— day of ——, 187—, had liberty to attend the proceedings therein,

[*or as may be*],

with a summons in this cause [*Or*, matter], dated the —— day of ——, 187—, issued from, and under the seal of, the Chambers of the Master of the Rolls [*Or*, the Vice-Chancellor Sir Richard Malins; *or as may be*], and addressed to the said [*Describe whom*]: by delivering to, and leaving with [*Describe the person or persons on whom, and where, service was effected; as thus:*]

the said A. B., personally, at [*State where*], in the (county) of ——,

Or,

the said A. B., personally, at [*State where*], in the (county) of ——, and the said C. D., personally, at, *&c.*,

Or,

each of the following persons, that is to say: (1) the wife of the said A. B., at his address for service, situate at [*State where*], in the (county) of ——; (2) the clerk of the said C. D., at the address for service of the said C. D., situate at, *&c.*; and (3) the servant of the said G. H., at the address for service of the said G. H., situate at, *&c.*

a true copy of the said summons; and I at the same time showed the said summons to the person [*Or*, to each of the persons] to whom such true copy was delivered as aforesaid: by which summons all parties concerned were required to attend at the Chambers aforesaid, in the Rolls' Yard, Chancery Lane, Middlesex [*or as may be, as in summons*], on ——, the —— day of ——, 187—, at —— of the clock in the ——noon, on the hearing of an application on the part of [*State whom, as in summons*], for [*State the object of the application, as in summons*].

(*z*) See note (*c*) to No. 874 *ante*.

2. There was at the foot of the copy [*Or*, of each copy] of the said summons so served, and at the foot of the said summons when so produced, as aforesaid, a memorandum or statement that such summons was taken out by ——, of ——, solicitor for —— [*Insert these particulars from the summons*].

[*Where the time for service has been enlarged by adjournment, add:*] 3. The said copy [*Or*, Each of the said copies] of the said summons, when so served as aforesaid, and the said summons when so produced as aforesaid, had in the margin thereof a memorandum in the words and figures following; namely [*Set out, verbatim, the memorandum of adjournment*].

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886. Affidavit of having been served with a summons.

[*Same as* No. 742 *ante, describing the document served thus:* "a copy of a summons on behalf of the said plaintiff" [*or as may be*] "addressed to [*State whom*]"].

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887. Notice that a summons will be attended by counsel (*a*).

[*Same as* No. 879 *ante.*]

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888. Notice of new appointment for the further consideration of a summons (*b*).

[*Same as* No. 880 *ante.*]

(*a*) See note (*o*) to No. 879 *ante.*
(*b*) See note (*p*) to No. 880 *ante.*

(3.) *Evidence.*

(*a*) *Time for taking Evidence.*

889.
Summons to limit a time for taking evidence (*a*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*or as may be*], that the evidence to be adduced by A. B. [*or as may be*], in support of
Or, in opposition to; *Or*, in reply to the evidence in opposition to
the claim made by A. B. under the account [*Or*, inquiry] numbered (5) in the judgment [*Or*, order], dated the —— day of ——, 187— [*or as may be*], may be closed on the —— day of ——, 187—.

890.
Summons for further time to adduce evidence (*b*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*or as may be*], that the time limited for the applicant to adduce evidence in opposition to the claim made by A. B. [*or as may be*], under the account [*Or*, inquiry] numbered (5) in the judgment [*Or*, order], dated the —— day of ——, 187—, may be enlarged to the —— day of ——, 187—.

(β) *Documentary Evidence* (*c*).

891.
Direction to seal a *subpœna* for a party or witness to produce documents at chambers (*d*).

Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers.
[*Short title, and reference to the record.*]
The Master of the Rolls [*Or*, Vice-Chancellor ——] directs that a *subpœna ad test.*, and *duces tecum*, be sealed on behalf of the defendant E. F. [*or as may be*], for the attendance of the plaintiff A. B. [*or as may be*], at Chambers. Dated this —— day of ——, 187—.

R. M., Chief Clerk.

892.
Præcipe for *subpœna* to produce documents at chambers (*e*).

In the High Court of Justice,
Chancery Division.
[*Short title.*] [*Reference to the record.*]
Seal a *subpœna ad test.*, and *duces tecum*, on behalf of the defendant E. F. [*or as may be*], directed to [*Insert the names of the persons to produce*].
Tested —— day of ——, 187—.
[*Name, &c., of solicitor or party issuing the writ: see ante* No. 92.]

(*a*) See Dan. Pr. 1058, 1064; Cons. Ord. XXXV. 40.
(*b*) *Ibid.*; Cons. Ord. XXXVII. 17; R. S. C. Ord. LVII. 6.
(*c*) As to documentary evidence, see *ante* Nos. 566 to 598, most of which forms apply, or may easily be adapted, to the case of proceedings in Chambers.
(*d*) See Cons. Ord. XXXV. 29.
(*e*) See Cons. Ord. XXVIII. 1.

893.

Subpœna to produce documents at chambers (*f*).

[*Proceed as in* No. 627 *ante, down to* "personally be and appear before," *and continue thus:*] R. M., esquire, one of the Chief Clerks of his lordship the Master of the Rolls [*or as may be*], at the Chambers of the said Judge, situate [*State where*] at such times as the bearer hereof shall by notice in writing appoint (*g*), to testify the truth according to your knowledge in a certain action [*Or*, cause] now depending in our High Court of Justice, wherein B. A. is plaintiff, and D. C. is defendant:

Or, wherein B. A. and others [*Or*, another] are plaintiffs, and D. C. and others [*Or*, another] are defendants:

Or, in a certain matter now depending in our High Court of Justice, intituled, In the matter of ——:

on the part of the defendant E. F. [*or as may be*]; and that you then and there bring with you [*Continue as in* No. 567 *ante to end*].

894.

Indorsement on the writ (*h*).

[*Same as* No. 94 *or* 95 *ante.*]

895.

Notice to witness of time for attendance.

Formal parts: see ante No. 21.

Take notice, that ——, the —— of ——, 187—, at —— of the clock in the —— noon, is hereby appointed, as the time at which you are to attend before R. M., esquire, one of the Chief Clerks of his lordship the Master of the Rolls [*or as may be*], at the Chambers of the said Judge, to give evidence, in obedience to the *subpœna*, dated the —— day of ——, 187—, directed to you in this cause [*Or*, matter].

896.

Compelling the production of documents before an examiner for the purpose of proceedings in chambers.

[*Same as* Nos. 566 *to* 579 *ante.*]

(*f*) See note (*b*) to No. 567, and note (*d*) to No. 627 *post*; for form of affidavit of service of the *subpœna* and notice to attend thereunder, see *ante* No. 645.

(*g*) See form of notice, *post* No. 895.

(*h*) See Cons. Ord. III. 2, 5.

897.

Notice to produce documents (*j*).

Formal parts : see ante No. 21.

Take notice, that you are hereby required to produce to his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], and to his Chief Clerk, at the Chambers of the said Judge, on the hearing of the summons taken out on behalf of the plaintiff [*or as may be*], returnable on the —— day of ——, 187—.

Or, on the appointment, on the —— day of ——, 187—, to proceed with the accounts and inquiries directed by the judgment [*Or*, order], dated the —— day of ——, 187— [*or as may be*],

the following documents ; namely : [*Describe the documents to be produced ; as thus :*]

the probate of the will of A. B., the testator in the said summons named.

Or, the letters of administration, of the personal estate of A. B., the intestate in the said summons named.

Or, the agreement, dated the 8th of June, 1869, in the affidavit of C. D., filed the ——, 187—, mentioned.

898.

Obtaining production of documents deposited in Court under an order (*k*).

[*Same as* No. 1744 *post.*]

899.

Petition of course for leave to use proceedings in another cause, as evidence at chambers (*l*).

Formal parts : see post No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows :

1. By a judgment [*Or*, an order] made in this cause [*Or*, matter], dated the —— day of ——, 187—, certain accounts and inquiries are directed to be taken and made [*or as may be*] : in which your petitioner is interested.

2. Your petitioner is advised to read as evidence, in the prosecution of the said accounts and inquiries, the documents hereinafter mentioned.

Your petitioner therefore humbly prays, that he may be at liberty, upon the accounts and inquiries directed by the said judgment [*Or*, order], to read and make use of the following documents ; namely :

(*j*) See Dan. Pr. 1065.

(*k*) See note (*d*) to No. 1741, and note (*f*) to No. 1744 *post.*

(*l*) For orders in like cases, see *Re Veysey*, M. R. 19 July, 1866 ; *Lewis* v. *Broad*, M. R. 2 Dec. 1869 ; *Saull* v. *Brown*, M. R. 2 July, 1870 ; all in Rolls Lib.

[*Describe the documents, and the cause or matter in which filed, &c. : see ante* No. 588] : saving all just exceptions.

And your petitioner will ever pray, &c.

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900. Summons for leave to use proceedings in other causes, as evidence at chambers (*m*).

Formal parts : see ante No. 881.

on the part of A. B., who has liberty to attend the proceedings under the judgment [*Or*, order], dated the —— of ——, 187— : that the applicant, and the plaintiff and defendant, and any person having liberty to attend, or seeking to be admitted as a creditor, may be at liberty to read, in the prosecution of the accounts and inquiries in this cause [*Or*, matter], the evidence which has been taken, or shall be adduced, in the causes of S. *v.* G. (187—, S. 204), and B. *v.* S. (187—, B. 102), or either of them : saving all just exceptions.

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901. Request by chief clerk that the Bank of England will furnish information from their books (*n*).

Master of the Rolls' Chambers, *&c.*
——, 187—.

Gentlemen :

In taking certain accounts, and answering certain inquiries, in these Chambers, under a judgment [*Or*, order], dated the ——, 187—, in the cause of A. *v.* B. [*or as may be*], it is requisite, for the due prosecution thereof, that the following information should be obtained from your books ; namely : [*State what ; as thus :*] the date on which a sum of £1,000 Bank £3 per cent. annuities, standing, on the 1st of January, 18—, in the name of C. D., of [*residence and addition*] (*o*), was transferred from such name, and to whom.

I am, therefore, directed by the Master of the Rolls [*Or*, Vice-Chancellor ——] to request that you will please to direct such information to be furnished to me.

I am, *&c.*,
R. M., Chief Clerk.

To the Governor and Company of the Bank of England.

(*m*) *Dunn* v. *Turquand*, V.-C. S. at Chambers, 9 March, 1864, Reg. Lib. A. 576.

(*n*) See Dan. Pr. 1066.

(*o*) This should, as nearly as possible, correspond with the description in the bank books.

902. Direction to an examiner to take the examination of a witness (*q*).

(γ) *Oral Evidence of Witnesses* (*p*).

Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers. } [*Date.*]

[*Short title, and reference to the record.*]

The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed that one of the examiners of the Court do take the examination of the defendant A. B. [*or as may be*].

Or, the cross-examination of A. B., on his affidavit, filed ——, 187— [*or as may be*],

for the purpose of the proceedings directed to be taken by the judgment [*Or*, order] in this cause [*Or*, matter], dated the ——, 187— [*or as may be*].

R. M., Chief Clerk.

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903. Summons for appointment of a special examiner (*r*).

[*Same as* Nos. 600 *and* 601 *ante. See also* Nos. 603 *to* 605, *which may be readily adapted to the case of proceedings in Chambers.*]

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904. Commission for the examination of witnesses abroad.

[*See ante* Nos. 607 *to* 619, *which may be readily adapted to the case of proceedings in Chambers.*]

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905. Mandamus to examine witnesses in a foreign dependency of the British Crown.

[*See ante* Nos. 620 *to* 625, *which may be readily adapted to the case of proceedings in Chambers.*]

(*p*) The evidence on proceedings in Chambers may be given by affidavit; see R. S. C. Ord. XXXVII. 2; and in general it is so given; but it may be given orally; and when so given it may be given either before an examiner; 15 & 16 Vict. c. 86, s. 40; *Cast* v. *Poyser*, 3 Sm. & Giff. 369; 3 Jur. N. S. 38; *Stebbing* v. *Atlee*, 26 L. J. Ch. 255; 2 Jur. N. S. 1161; or before commissioners; 15 & 16 Vict. c. 86, s. 28; or before the Judge's chief clerk; 15 & 16 Vict. c. 80, s. 30; Cons. Ord. XXXV. 4, 30; Ord. 5 Feb. 1861, rule 15; where the evidence is taken before the chief clerk, the witness or any party has a right to require that the case be adjourned to the Judge, and the examination taken before him personally; Dan. Pr. 1060. In the Rolls Chambers the practice is to have the examination taken before an examiner, and not before the chief clerk; *Ridgway* v. *Ridgway*, M. R. at Chambers, 11 April, 1876.

(*q*) See Dan. Pr. 1059, 1061.

(*r*) See note (*e*) to No. 600 *ante*.

[*Same as* Nos. 626 *to* 629, *and* 636 *to* 645 *ante.*]

906. Compelling the attendance of witnesses before the examiner.

[*Same as* Nos. 646 *to* 660 *ante.*]

907. Oaths, affirmations, and declarations of witnesses examined *vivâ voce.*

[*Same as* Nos. 661 *to* 663 *ante.*]

908. Formal parts of deposition or examination taken before an examiner (*s*).

[*Same as* Nos. 664 *to* 666 *ante.*]

909. Demurrers by witnesses.

[*Same as* Nos. 667 *to* 669 *ante.*]

910. Translating the depositions.

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911. Chief Clerk's summons for the attendance of a witness for examination (*t*).

In the High Court of Justice,
Chancery Division.
[*Title of the cause or matter, and reference to the record.*]
The plaintiff A. B.
Or, The defendant A. B.
Or, A. B., of [*residence and addition*],
Or, A. B., of, *&c.*, and C. D., of, *&c.*,
is [*Or,* are] hereby summoned to attend at the Chambers of the

(*s*) As to the mode in which the examination is taken, see note (*l*) to No. 661 *ante.*

(*t*) See Dan. Pr. 1044, 1059; and note (*p*) at p. 484 *supra.* For form, see Cons. Ord. XXXV. 4, and Sched. K, No. 3. The summons may contain the names of three witnesses when necessary or required; Dan. Pr. 1059. On issuing the summons a fee is payable of 3*s.* on the higher, and 2*s.* on the lower scale, by means of a stamp impressed upon or adhesive to the summons; Ord.

Master of the Rolls [*Or*, of the Vice-Chancellor ——], in the Rolls' Yard, Chancery Lane, Middlesex [*or as may be*], on ——, the —— day of ——, 187—, at —— of the clock in the —— noon.

[*If the person summoned is a party to the suit, add:*] to be examined,

[*But if he is not, add:*] to be examined as a witness,

on the part of [*State whom; as thus:*]

the defendant E. F.; *Or*, the plaintiff; *Or*, G. H.

for the purpose of the proceedings directed by the Master of the Rolls [*Or*, the said Vice-Chancellor] to be taken before me.

[*If the person served is required to produce documents (u), add:*] And the said A. B. is hereby also required then and there to bring with him and produce the following documents; that is to say: [*Specify the documents to be produced* (*v*)].

Dated this —— day of ——, 187—.

R. M., Chief Clerk.

This summons was taken out by A. and B., of Lincoln's Inn, in the county of Middlesex, solicitors for the defendant E. F. [*or as may be*] (*w*).

912.

Affidavit of service of summons and of non-attendance thereunder (*x*).

Formal parts: see ante No. 693.

1. On ——, the —— day of ——, 187—, I served [*Describe the person served; as thus:*]

the plaintiff A. B.; *Or*, the defendant A. B.;

Or, A. B., the person named in the summons hereinafter mentioned,

with a summons in this cause [*Or*, matter], dated the —— day of ——, 187—, issued from the Chambers of the Master of the Rolls [*Or*, of the Vice-Chancellor ——], and signed by R. M., esquire, one of the Chief Clerks of the said Judge: by delivering to, and leaving with, the said A. B., personally, at [*State where*], in the

as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522. For the practice as to preparing and issuing the summons, see Dan. Pr. 1050. The summons must be served in the same manner as a *subpœna ad test.*; Dan. Pr. 1051, 1054, 1055; as to the manner in which a *subpœna ad test.* must be served, see note (*d*) to No. 627 *ante*. As to the expenses of the persons summoned, see Dan. Pr. 803, 1060. If a person having been duly served with the summons does not attend in pursuance thereof, he is guilty of a contempt of Court; 15 & 16 Vict. c. 80, s. 31; Dan. Pr. 1059; for forms of application to commit for contempt, see *post* Nos. 1902, 1904; and for form of affidavit in support in this case, see *post* No. 912.

(*u*) See Dan. Pr. 1059.

(*v*) For the mode of describing the documents, see *ante* No. 567, and note (*d*) thereto.

(*w*) See note (*l*) to No. 865.

(*x*) See note (*t*) to No. 911 *ante*.

(county) of ——, a true copy of the said summons; and I at the same time showed the said summons to the said A. B.

2. By the said summons the said A. B. was required to attend [*Recite the body of the summons: substituting* "this cause," *or* "this matter," *for the description therein of the cause, or matter*].

3. There was at the foot [*Continue as in paragraph 2, of* No. 885 *ante, to the end of that paragraph*].

4. [*Prove default of the party summoned; as thus:*] On ——, the —— day of ——, 187—, at —— of the clock in the —— noon, the time appointed for the attendance of the said A. B., as aforesaid, I attended before the said Chief Clerk, at the Chambers of the said Judge; but the said A. B. did not then and there attend to be examined [*If so:* and produce the said documents], as aforesaid; and the said A. B. has neglected or refused to obey the said summons.

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913. Motion paper for a *habeas* to compel attendance before the Chief Clerk of a person in custody (*y*).

Formal parts: see No. 1570.

To move on behalf of the plaintiff [*or as may be*], that a *habeas* may issue, directed to the keeper of the Holloway Prison [*or as may be*], to bring E. F. before the Chief Clerk of the Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers, on the ——, 187—, and on such other days as he shall appoint: to be examined as a witness for the plaintiff [*or as may be*].

An affidavit in support, and the keeper's certificate of custody, accompany.

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914. Petition of course for the like (*y*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*or as may be*],

Showeth as follows:

1. [*Show state of the cause, or matter; as thus:*] Pursuant to the judgment [*Or*, an order] dated the —— day of ——, 187—, certain accounts and inquiries are now being taken, and made by the Chief Clerk of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——]: in which your petitioner is interested.

2. [*Show grounds for requiring the attendance of the prisoner; as thus:*] E. F., now a prisoner in the Holloway Prison [*or as may be*], is a material witness for your petitioner on the said accounts and inquiries; and your petitioner is advised to examine the said E. F., *vivâ voce*, before the said Chief Clerk.

3. By reason of the said E. F. being a prisoner, your petitioner is unable to procure his attendance for the purpose aforesaid.

Your petitioner therefore humbly prays, that a writ of *habeas corpus* may issue, directed to the keeper of the said prison, to bring the said E. F. before the

(*y*) See Dan. Pr. 1060. For order to attend at Chambers, in like case, see *Buckeridge* v. *Whalley*, 6 W. R. 180, V.-C. K.

said Chief Clerk at the Chambers of the Master of the Rolls [*Or* of the said Vice-Chancellor ——], on [*State when*], and on such other days as the said Chief Clerk shall appoint, to be examined as a witness for your petitioner [*or as may be*].

And your petitioner will ever pray, &c.

915.

Affidavit in support of motion or petition for a *habeas* (*z*).

Formal parts: see ante No. 693.

1—3. [*State the facts, as in* No. 914 *ante; substituting* "the plaintiff," *or as may be, for* "your petitioner."]

4. [*Show means of knowledge.*]

916.

Præcipe for the writ (*a*).

[*Same as* No. 639 *ante.*]

917.

The writ (*b*).

Proceed as in No. 640 *ante, to* greeting:

We command you, that you have the body of E. F. detained in our prison under your custody, as it is said, under safe and secure conduct, before R. M., esquire, one of the Chief Clerks of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], at [*State where; as thus:*] the Chambers of the said Judge in Rolls' Yard, Chancery Lane, Middlesex [*or as may be*], on ——, the —— day of ——, instant [*Or*, next], by —— of the clock in the ——noon of the same day, and on such other days as the said Chief Clerk shall appoint, then and there to testify the truth, according to his knowledge, in a certain cause now depending in our High Court of Justice, wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants;

Or, in a certain matter now depending in our High Court of Justice, intituled In the matter of ——;

on the part of the plaintiff [*or as may be*]; and immediately after the said E. F. shall then and there have given his testimony before the said Chief Clerk, that you return him, the said E. F., to our said prison, under safe and secure conduct; and have there then this writ. Witness [*&c.: Conclude as in* No. 627 *ante*].

(*z*) See Dan. Pr. 1060.

(*a*) *Ibid.* The order to issue the writ must be produced at the time the writ is sealed.

(*b*) See Dan. Pr. 1060; and note (*o*) to No. 640 *ante*.

[*Same as* No. 94 *or* No. 95 *ante.*]

[*Same as* Nos. 646 *to* 660 *ante.*]

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918. Indorsement on the writ (*c*).

919. Oaths, affirmations, and declarations of witnesses before a chief clerk (*d*).

920. Formal parts of depositions of witnesses examined in chief before a chief clerk (*e*).

In the High Court of Justice,
Chancery Division.
[*Set out the full title of the cause or matter, and the reference to the record.*]
Deposition of a witness [*Or*, Depositions of witnesses] examined in the above cause [*Or*, matter],
before me,
R. M., Chief Clerk.

Sworn the —— day of ——, 187—. } A. B., of [*residence and addition*], examined on behalf of the plaintiff [*or as may be*], saith as follows :—

I was not, *&c.*

—— day of ——, 187—. } Examination continued :—

When I saw, *&c.*

Cross-examined on behalf of the defendant C. D. [*or as may be*] :—

I am, *&c.*

Re-examined on behalf of the plaintiff [*or as may be*] :—

I shall, *&c.*

Cross-examined on behalf of the defendant C. D. [*or as may be*], upon new matter in the re-examination :—

Having now seen, *&c.*

Re-examined on behalf of the plaintiff [*or as may be*] :—

My impression still is, *&c.*

A. B.

Sworn the —— day of ——, 187—. } E. F., of [*&c.: as above*].

I hereby certify that the evidence contained in this and the —— preceding sheets of paper was taken by me, and was afterwards read over to the witness [*Or*, respective witnesses], and signed by him [*Or*, them], in the presence of the parties attending.

R. M., Chief Clerk.

(*c*) See Cons. Ord. III. 2, 5.

(*d*) As to the power of a chief clerk to administer an oath, or receive an affirmation, see 15 & 16 Vict. c. 80, s. 30; Dan. Pr. 1044.

(*e*) The examination of a witness is taken before a chief clerk in the same manner as before an examiner; Cons. Ord. XXXV. 30. As to the practice on taking an examination before an examiner, see note (*l*) to No. 661 *ante.*

MIDDLE

921.

Formal parts of deposition of a witness cross-examined on his affidavit, before a chief clerk (*f*).

In the High Court of Justice,
Chancery Division.
[*Set out the full title of the cause or matter, and the reference to the record.*]
Deposition of a witness cross-examined in the above cause [*Or*, matter],
before me,
R. M., Chief Clerk.

Sworn the —— day of ——, 187—. } A. B., cross-examined on behalf of the defendant C. D. [*or as may be*], on his affidavit filed the —— day of ——, 187—, in this cause [*Or*, matter], saith as follows :—

I was lately, *&c.*
Re-examined on behalf of the plaintiff [*or as may be*] :—
I think it was, *&c.*
Cross-examined on behalf of the defendant C. D. [*or as may be*], upon new matter in the re-examination :—
Having now seen, *&c.*
Re-examined on behalf of the plaintiff [*or as may be*] :—
My impression is, *&c.*

A. B.

I hereby certify [*Continue as in* No. 920 *ante, to the end*].

922.

Demurrers by witnesses.

[*Same as* Nos. 664 *to* 666 *ante.*]

(δ) *Evidence by Affidavit* (*g*).

923.

Formal parts of affidavits, affirmations, and declarations.

[*Same as* Nos. 693 *to* 722 *ante.*]

924.

Memorandum of exhibit (*h*).

[*Same as* No. 723 *ante.*]

(*f*) See note (*e*) to No. 920 *ante.*

(*g*) The evidence made use of at Chambers is ordinarily adduced by affidavit ; Dan. Pr. 1058 ; and see R. S. C. Ord. XXXVII. 2. As to using evidence which has previously been used in the cause or matter, see Dan. Pr. 1058.

(*h*) Any document referred to in an affidavit to be used in Chambers must be exhibited and not annexed ; Reg. 8 Aug. 1857, rule 11.

925. Notice of filing an affidavit, &c. (*j*).

[*Same as* No. 724 *ante*.]

926. Notice of intention to read an affidavit already filed (*k*).

[*Same as* No. 725 *ante*.]

927. Summons for attendance for cross-examination of a deponent who has made an affidavit (*l*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to cross-examine X. Y., of [*address and description*], upon the affidavit made by him in this cause [*Or*, matter], and filed on the —— day of ——, 187—, by the defendant, for the purpose of being read and used upon the hearing of the summons taken out by the defendant in this cause [*Or*, matter], and dated the —— day of ——, 187—. And that such cross-examination may be taken before the Examiner [*Or*, the Chief Clerk] in the manner provided by the statute 15 & 16 Vict., c. 86 (*m*). And that the defendant may be ordered to produce the said X. Y. for cross-examination before the Examiner [*Or*, Chief Clerk] accordingly at such time and place as the said Examiner [*Or*, Chief Clerk] may appoint. And that, unless the said X. Y. be produced accordingly, the said defendant may not be at liberty to read or use the said affidavit as evidence in this cause [*Or*, matter] without the special leave of the Court (*n*).

928. Notice of intention to cross-examine witnesses and for their production accordingly (*o*).

Formal parts : see ante No. 21.

Take notice that the plaintiff [*Or*, defendant ; *or as may be*] intends to cross-examine the several deponents named and described

(*j*) See note (*s*) to No. 724 *ante*.

(*k*) See note (*t*) to No. 725 *ante*.

(*l*) The Court or a Judge may, on the application of either party, order the attendance for cross-examination of a person who has made an affidavit to be used on the hearing of any summons ; R. S. C. Ord. XXXVII. 2.

(*m*) See 15 & 16 Vict. c. 86, ss. 31 to 34 ; Ord. as to Evidence, 5 Feb. 1861, rule 10 ; Ord. 6 March, 1860, rule 16 ; and note (*l*) to No. 661 *ante*.

(*n*) See Ord. as to Evidence, 5 Feb. 1861, rule 19.

(*o*) As to the right of a party to cross-examine a witness who has made an affidavit filed by the opposite party, see Ord. as to Evidence, 5 Feb. 1861, rule 19 ; but see now R. S. C. Ord. XXXVII. 2 ; note (*l*) to No. 927 *ante*. The notice must be given within fourteen days next after the filing of the affidavit ; Ord. as to Evidence, 5 Feb. 1861, rule 19. The party to whom the notice is given may compel the attendance of the witness for cross-examination in the same manner as he might compel the attendance of a witness to be examined ; *Ibid.*, rule 20 ; *i.e.*, by *subpœna* or chief clerk's summons. Where notice is given to cross-examine an accounting party upon his accounts,

in the schedule hereto upon their affidavits filed in this cause [*Or*, matter], on behalf of the defendant [*or as may be*], on the respective dates in the said schedule mentioned. And that I have obtained an appointment for such cross-examination before C. D., esquire, one of the Examiners of the Court,

Or, before C. D., esquire, the Examiner specially appointed for this purpose by order dated the —— day of ——, 187—;

Or, before R. M., esquire, the Chief Clerk to his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——];

for —— day, the —— day of ——, 187—, at —— of the clock in the —— noon, at [*State where*].

And take also notice, that you are hereby required to produce the said deponents at the time and place aforesaid, for cross-examination before the said Examiner [*Or*, Chief Clerk] accordingly.

THE SCHEDULE ABOVE REFERRED TO.

Name of deponent.	Description.	Date of filing of affidavit.
X. Y.	300, Chancery Lane, Solicitor . . .	1877, April 7.
T. Z.	Hampstead Heath, Esq.	1877, April 8.

929.

Summons for further time to serve notice requiring production of witness for cross-examination (*p*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that he may have —— days' further time to serve a notice requiring the production of X. Y., who has made an affidavit, filed in this cause [*Or*, matter] on behalf of the defendant [*or as may be*], for cross-examination upon his said affidavit. And that the costs of this application may be costs in the action (*q*).

930.

The like—where the time has expired (*p*).

Formal parts: see ante No. 881.

on the part of the plaintiff, that, notwithstanding the time allowed for that purpose has expired, he may be at liberty, on or before the —— day of ——, 187—, to serve [*Continue as in* No. 929 *ante*, *to end*].

the notice should go on to specify the particular items to which the cross-examination will be directed; Dan. Pr. 1127; *Bates* v. *Eley*, 1 Ch. D. 473.

(*p*) See Ord. as to Evidence, 5 Feb. 1861, rule 19; note (*o*) to No. 928 *ante*.

(*q*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22; and note (*d*) to No. 402 *ante*.

[*Same as* Nos. 726, 728, 729 *ante*.]

931. Application to take an affidavit off the file for scandal, or to expunge scandalous matter.

(e) *Examination on Interrogatories* (*h*).

932. Formal parts of interrogatories, for the examination of a party or witness before a chief clerk (*i*).

In the High Court of Justice,
Chancery Division.
[*Full title of the cause or matter, and reference to the record.*]
Interrogatories exhibited on the part of the above-named plaintiff A. B. [*or as may be*], for the examination of the above-named defendant C. D. [*or as may be*], for the purpose of the proceedings directed by his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——] to be taken, pursuant to the judgment [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 187—.

1. Do you know, *&c.*
2. Were you present, *&c.*
3. Did not, *&c.*

[*Name of counsel* (*k*).]

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933. Notice of appointment to settle interrogatories (*l*).

Formal parts : see ante No. 21.

Take notice that the Chief Clerk of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——] has appointed ——, the —— day of ——, 187—, at —— of the clock in the —— noon, at the Chambers of the said Judge, to settle the interrogatories for the examination of the plaintiff A. B. [*or as may be*], under the judgment [*Or*, order] dated the —— day of ——, 187—.

(*h*) As to the power of the Chief Clerk to examine parties and witnesses on interrogatories, see 15 & 16 Vict. c. 80, s. 30 ; Dan. Pr. 1044.

(*i*) Dan. Pr. 1061. For forms of interrogatories for the examination of parties and witnesses before a Master in Ordinary : which can readily be adapted to a like examination before a Chief Clerk : see 2 Van Hey. 274—319—329 ; Bennett's M. O. Appx. 33—37 ; 2 Grant, 162—165. For the practice at Chambers as to such examination, see Dan. Pr. 1061—1064 ; and in the Master's Office, see Dan. Pr. ed. 2. 1144—1148 ; Bennett's M. O. Index, 160, 161 ; 1 Grant, 309, *et seq.*

(*k*) Counsel's signature seems to be only necessary to interrogatories for the examination of a witness ; Dan. Pr. 1061.

(*l*) See Dan. Pr. 1061.

934.
Memorandum of allowance of interrogatories (*m*).

——, 187—.

[*Short title.*]

These interrogatories have been settled and allowed.

R. M., Chief Clerk.

935.
Notice of allowance of interrogatories (*n*).

Formal parts: see ante No. 21.

Take notice that interrogatories have been settled and allowed at the Chambers of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], for the examination of the plaintiff [*or as may be*], under the judgment [*Or*, order] dated the ——, 187—; and that such interrogatories have been left, in duplicate, at the said Chambers.

936.
Summons to limit a time for filing the examination (*o*).

Formal parts: see ante No. 881.

on the part of the defendant C. D. [*or as may be*], that the plaintiff A. B. [*or as may be*], may be ordered, within (four) days after service of the order to be made hereon, to file in the office of the Clerks of Records and Writs his answer and examination to the interrogatories settled and allowed for that purpose, under the judgment [*Or*, order] dated the —— day of ——, 187—.

937.
Summons for further time to file the examination (*p*).

Formal parts: see ante No. 881.

on the part of the plaintiff A. B. [*or as may be*], that he may have (one month's) further time to file his answer and examination to the interrogatories settled and allowed for his examination, under the judgment [*Or*, order] dated the —— day of ——, 187—.

(*m*) See Dan. Pr. 1061. The interrogatories, when settled at Chambers, are to be written, in duplicate, on paper of the same description and size as that on which proceedings are printed: *Ibid.*; Ord. 6 Mar. 1860, rule 16. As to such paper, see R. S. C. Ord. LVI. 2; *ante* note (*a*) to No. 210.

(*n*) See Dan. Pr. 1061.

(*o*) *Ibid.* For order in like case, see Seton, 1232, No. 2. For affidavit of service of the order, see *post* No. 1266.

(*p*) See Dan. Pr. 1062; Ord. XXXVII. 17. For order in like case, see *Watkins* v. *Thomas*, M. R. at Chambers, 23 Dec. 1869, Reg. Lib. B. 3157.

938.
Formal parts of the examination (*q*).

In the High Court of Justice,
Chancery Division.
[*Full title of the cause or matter, and reference to the record.*]
The answer and examination of the above-named plaintiff A. B. [*or as may be*], to the interrogatories exhibited [*Continue as in* No. 932 *ante, to the end of the heading*].
In answer to the said interrogatories, I, the plaintiff A. B. [*or as may be*], make oath and say as follows :—
1. To the first interrogatory :—I believe, *&c.*
2. To the second interrogatory :—I have, *&c.*
Sworn [*&c.: see ante* No. 696].

939.
Notice of having filed the examination (*r*).

Formal parts : see ante No. 21.
Take notice that I have this day filed the answer and examination of the plaintiff A. B. [*or as may be*], to the interrogatories settled and allowed for his examination, under the judgment [*Or,* order], dated the ——, 187—.

940.
Notice of appointment to consider sufficiency of the examination (*t*).

Formal parts : see ante No. 21.
Take notice that the Chief Clerk of his lordship the Master of the Rolls [*Or,* the Vice-Chancellor ——] has appointed ——, the —— day of ——, 187—, at —— of the clock in the ——noon, at the Chambers of the said Judge, to consider the sufficiency of the answer and examination of the plaintiff A. B. [*or as may be*] to the interrogatories settled and allowed for his examination, under the judgment [*Or,* order] dated the ——, 187—.

(*q*) See Dan. Pr. 1062. The examination must be written on paper of the same description and size as that on which proceedings are printed: *Ibid.*; Ord. 6 Mar. 1860, rule 16 ; as to such paper, see R. S. C. Ord. LVI. 2 ; *ante* note (*a*) to No. 210. The rules as to printing do not apply to an examination ; Dan. Pr. 1063, note (*y*). The examination, when sworn, is annexed to the duplicate of the interrogatories, and filed therewith at the Record and Writ Clerks' office ; *Ibid.*, 1063. For forms of examination in answer to interrogatories exhibited in the Masters' office, see 2 Van Hey. 122—126 ; Bennett's M. O. 37 ; 2 Grant, 166—169.

(*r*) See Dan. Pr. 1063. As to obtaining an office copy of the examination, see *Ibid.*

(*t*) *Ibid.*, 1063. For the rule of the Court, in determining as to the sufficiency of an examination, and as to the course where the examination is held to be insufficient, see *Ibid.* As to the costs of an insufficient examination, see Dan. Pr. 1063 ; and as to when a supplemental examination will be allowed, *Ibid.*, 1064.

(ζ) *Statements of Facts* (*u*).

941. Formal parts of a concise statement for chambers.

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]
Concise statement of the plaintiff [*Or*, defendant A. B.; *or as may be*], as to [*State what; as thus:*] the residuary legatees of the testator A. B., in answer to the first inquiry directed by the judgment [*Or*, order] dated the ——, 187— [*or as may be*].

1.
2. } [*Set out the facts, in numbered paragraphs.*]
3.

(η) *Scientific Assistance* (*v*).

942. Letter of instructions to a scientific person (*x*).

Master of the Rolls' Chambers, *&c.*
——, 187—.

SIR:

[*Short title.*]

By the judgment [*Or*, order] dated the ——, 187—, made by the Master of the Rolls [*Or*, Vice-Chancellor ——] in this cause [*Or*, matter], an account is directed to be taken [*Or*, an inquiry is directed to be made] as to [*State nature of the account or inquiry on which the assistance of the scientific person is sought*].

By consent of the plaintiff and defendant [*or as may be*], the Master of the Rolls [*Or*, Vice-Chancellor ——] has appointed you [*State what to do; as thus:*] to inspect the said estate, and report to him what, in your opinion, is the amount of the abatement which ought to be made from the purchase-money thereof, by reason of the plaintiff not being able to make a title to the close of land called Whiteacre, numbered 15 on the map, marked A., sent herewith.

I send you herewith the following documents: [*Specify them*].

Mr. A. B., of C., the plaintiff's solicitor, and Mr. D. E., of F., the defendant's solicitor, will furnish you with any further information you may require; and you will be so good as to communicate with them, and arrange as to the time and mode of entering upon your duties [*or as may be*].

I will thank you to forward your report to me, as soon as it is ready.

The Act of Parliament, 15th & 16th Victoria, Chapter 80, under

(*u*) See Dan. Pr. 1057, 1058; Cons. Ord. XXXV. 26.

(*v*) As to the power of the Court or Judge to obtain, and the mode of obtaining, the assistance of a scientific person, see Dan. Pr. 846, 1048; 15 & 16 Vict. c. 80, ss. 42, 43; and see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57.

(*x*) See Dan. Pr. 1048.

which the Judge is empowered to obtain the assistance of a scientific person, provides, by section 43, that the allowance in respect of fees to such person shall be regulated by the Taxing Master of the Court, subject to an appeal to the Judge to whom the cause is attached: whose decision is to be final; and you will please to consider that your appointment is made subject to this provision.

Be so good as to acknowledge the receipt of this communication.

I am, &c.,

To E. B., of, *&c.* R. M. Chief Clerk.

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943. Affidavit verifying the report of a scientific person (*y*).

Formal parts: see ante No. 693.

The paper writing, marked A., now produced and shown to me (*z*), is the report made by me, pursuant to the instructions contained in the letter dated the —— day of ——, 187—, addressed to me in this cause [*Or*, matter] by R. M., esquire, Chief Clerk of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——].

(4.) *Orders made in Chambers* (*a*).

944. Summons to discharge or rectify an order made at chambers.

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that the order dated the ——, 187—, made at Chambers on the application of the defendant A. B. [*or as may be*], may be discharged.

Or, may be rectified in the respect following; namely: [*State what*].

(*y*) See Dan. Pr. 1048. For form of affidavit by an accountant of the result of his investigation of partnership accounts, see *post* No. 1056.

(*z*) For form of memorandum of exhibit, see *ante* No. 723.

(*a*) As to drawing up orders made in Chambers, see Dan. Pr. 1066, 1067; 15 & 16 Vict. c. 80, ss. 14, 15. As to withdrawing a consent to an order made by consent before the order is entered, see note (*a*) at p. 462 *ante*. On drawing up and entering orders made at Chambers, a fee is payable of 5*s*. on the higher, and 3*s*. on the lower scale, by means of a stamp impressed upon or adhesive to the order; Ord. as to Court Fees, Oct. 1875, Sched; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522. For the practice where the order is drawn up by the Registrar, see *ante*, note (*b*) to No. 852. For forms of order on summons, see Seton, ed. 4, pp. 60, 61. As to appeals from orders made by the Judge personally in Chambers, see *Murr* v. *Cooke*, 24 W. R. 756; *Thomas* v. *Elsom*, 6 Ch. D. 346; W. N. (1877), 205; *Re Marsh*, W. N. (1877), 205; *Northampton Coal Co.* v. *Midland Waggon Company*, 7 Ch. D. 500; and *post*, note (*a*) at p. 780. The order may be enforced in like manner as a judgment to the same effect; R. S. C. Ord. XLII. 20; see *post*, note (*a*) at p. 687.

(5.) *Allowance pending Litigation* (*b*).

945. Summons for an allowance (*c*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that [*Describe the allowance required, and out of what fund; as thus:*]

the whole of the annual income of the real and personal property [*or as may be*] of A. B., the testator in the pleadings named, may be allowed to the applicant, until the hearing of this cause;

Or, out of the annual income of the real and personal property [*or as may be*] of A. B., *&c.*, the annual sum of £200 may be allowed to the applicant, until, *&c.*;

Or, out of the personal property of A. B., *&c.*, the sum of £100 may be allowed to the applicant on account of his share thereof;

[*Describe the person or fund to pay; as thus:*]

And that the defendants C. D. and E. F., the trustees and executors of the said will,

Or, And that the receiver appointed in this cause

may be directed to pay to the applicant the said annual income from time to time,

Or, the said annual sum of £200

by half-yearly payments on the —— day of ——, and —— day of ——: the first of such payments to be made on the —— day of ——, 187—.

Or, And that out of the £—— cash in Court to the credit of this cause, H. *v.* D., 187—, H. No. ——, the said £100 may be paid to the applicant G. H.

(*b*) As to when an allowance pending litigation will be made, see Dan. Pr. 1070; 15 & 16 Vict. c. 86, s. 57.

(*c*) See Dan. Pr. 1070.

Section II.—Proceedings originating in Chambers (*o*).

(1.) *Administration of Estates on Summons* (*p*).

946.

Summons to administer an estate (*q*).

187—. T. No. (*ss*).

In the High Court of Justice,
Chancery Division (*r*).
[*Name of Judge* (*s*).]

In the matter of the estate of [*State the name, late residence, and addition of the person whose estate is to be administered; as thus:*] John Thomas, late of the parish of Ash, in the county of Bedford, esquire, deceased:

Between [*Add the names of the intended plaintiff, or plaintiffs; as thus:*] Joseph Wilson . . . . plaintiff, [*and where the plaintiff sues on behalf of himself and others, state so: see ante* No. 212; *and where the*

(*o*) See Dan. Pr. 1071—1082.

(*p*) As to the jurisdiction to administer an estate in a proceeding commenced by summons, see Dan. Pr. 1071—1076; 15 & 16 Vict. c. 86, ss. 45—47; and as to the statutory power of trustees to give receipts for proceeds of sale of realty, see 23 & 24 Vict. c. 145, s. 29; Dan. Pr. 1073, note (*q*); and see 22 & 23 Vict. c. 35, ss. 14—18. For order to administer the personal estate at the instance of the purchaser of the share of a residuary legatee, see *Re Baldwin, Baldwin* v. *Bennett*, M. R. at Chambers, 8 Dec. 1868, Reg. Lib. A. 3041; and see Dan. Pr. 1071, note (*p*).

(*q*) See Dan. Pr. 1073. The form here given is adapted from the form in Sched. K. No. 2, to Cons. Ord.; which may be used with such variations as the circumstances of the case may require; Cons. Ord. XXXV. 3. As to the parties to the cause, and the authority to institute proceedings, see note (*b*) at p. 468 *ante*, and *ante* Chaps. I. and II. For the practice as to preparing, issuing, and serving originating summonses, filing duplicates, and sealing copies for service, the paper on which duplicates must be written, recording the original summons, and marking the reference to the record, and as to the fees payable, see note (*b*) at p. 468 *ante*. As to the hearing of an administration summons, and subsequent proceedings, see Dan. Pr. 1074—1076. For the formal parts of an order on an administration summons, see Seton, ed. 4, pp. 60, 61, Nos. 3, 4, 5. For the practice as to drawing up, passing and entering the order, see *ante* Nos. 852—857, and notes thereto. As to appealing from the order, see *post*, note (*a*) at p. 780. As to service of notice of the order, see *ante*, pp. 17—27. As to the prosecution of the order at Chambers, see *post* Nos. 962 *et seq.* As to granting an injunction or receiver in a summons suit, see Dan. Pr. 1075.

(*r*) Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11; R. S. C. Ord. V. 4.

(*s*) Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 33, 42; R. S. C. Ord. V. 4, 4*a* (R. S. C. June, 1877); *ante*, note (*c*) to No. 210. The cause may not, until further order, be assigned to Mr. J. Fry; Ord. of the L. C. of June, 1877; *ante*, note (*c*) to No. 210.

(*ss*) See note (*e*) to No. 210 *ante*, and note (*b*) at p. 468 *ante*.

plaintiff is under disability, add the name of a next friend: see ante No. 212 ;]

and

[*Add the names of the intended defendant or defendants; as thus:*] William Jackson . . . . . defendant (*t*).

Upon the application of

[*Add the name of the plaintiff, and his residence and addition; or, where he is under disability, his name, and the name, residence and addition of a next friend: as in the case of writs of summons: see ante* No. 212] :

who claims to be

[*Show that the applicant is one of the persons, or the representative of one of the persons, described in the* 15 *&* 16 *Vict. c.* 86, *ss.* 45, 47, *as entitled to sue by summons; as thus:*]

a creditor upon the estate of the above-named John Thomas ;

Or, a specific [*Or*, pecuniary ; *Or*, residuary] legatee under the will of the above-named John Thomas ;

Or, the next of kin [*Or*, one of the next of kin] of the above-named John Thomas ;

Or [*where the summons relates to real estate*], interested under the will of the above-named John Thomas ;

[*Or, where the plaintiff claims in a representative character, state how; as thus:*]

who, as the executor [*Or*, administrator] of James Williams, late of [*residence and addition*], deceased,

Or, who, as trustee of the property of James Williams, of, *&c.*, a bankrupt,

Or, who, by virtue of an indenture of assignment dated the —— day of ——, 187—, made between James Williams of the one part, and the applicant of the other part,

claims to be a creditor [*&c.; as above*] :

Let [*Name the defendants, the legal representatives, and show in what character they are sued; as thus:*] William Jackson, the executor [*Or*, administrator of the effects] of the said John Thomas,

Or, William Jackson: who is joint executor with the applicant of the said John Thomas (*u*),

Or, William Jackson, the surviving executor of the said John Thomas, and Edward Styles, the executor [*Or*, administrator of the effects] of Charles Hughes, the deceased executor of the said John Thomas,

Or, William Jackson, the administrator *de bonis non* of the said John Thomas, and Edward Styles, the executor of Charles Hughes, the deceased administrator of the effects of the said John Thomas,

Or, Edward Styles, the devisee in trust of the real estate of the said John Thomas, and William Jackson, his executor,

(*t*) As to the parties to causes commenced by summons, see note (*b*) at p. 468 *ante*, and references there.

(*u*) See Dan. Pr. 1076, note (*s*).

[*If there is any formal defendant: e.g., the husband of a married woman suing by her next friend: add his name here; as thus:*]
and also the above-named Robert Brown,
attend at my Chambers in the Rolls' Yard [*&c.: see ante* No. 865] on ——, the —— day of——, 187—, at —— of the clock in the ——noon, and show cause, if he [*Or*, they] can, why an order for the administration of the personal [*Or*, real and personal] estate of the said John Thomas [*or as may be*], by the High Court of Justice, should not be granted. Dated [*Continue as in* No. 865 *ante, to the end of that form*].

947.

Affidavit in support of an administration summons by a creditor (*x*).

Formal parts: see ante No. 693.

1. [*State the amount and nature of the debt, and any existing security for its payment; or negative the existence of any such security: as in* No. 985 *et seq., post.*]

2. [*Prove that the defendants are the proper persons to be sued; as thus:*] The said John Thomas died on or about the —— day of ——, 187—; and probate of his will has [*Or*, letters of administration of his personal estate have] been granted by the Principal Registry [*or as may be*] of the Probate Division of Her Majesty's High Court of Justice to the defendant William Jackson [*or as may be* (*y*)].

3. [*Show means of knowledge.*]

948.

Affidavit in support of an administration summons by a specific, pecuniary, or residuary legatee (*z*).

Formal parts: see ante No. 693.

1. [*State, succinctly, the nature of the bequest; as thus:*] The above-named John Thomas, by his will dated the —— day of ——, 187—, bequeathed to me all his household furniture and effects.

Or, a legacy of £100, payable three months after his death.

Or, one-fifth of the residue of his personal estate and effects.

Or, an annuity of £20 during my life.

2. [*Prove that the defendant is the proper person to be sued; as thus:*] The said John Thomas died on or about the —— day of ——, 187—, without having revoked or altered his said will; and probate of his said will has been granted by the Principal Registry [*or as may be*] of the Probate Division of Her Majesty's High Court of Justice to the defendant William Jackson [*or as may be*].

3. [*Show that the bequest has not been satisfied; as thus:*] The

(*x*) As to the evidence required to support an administration summons, see Dan. Pr. 1073.

(*y*) The fact that the defendant is the legal personal representative of the deceased person should be established by production of the probate or letters of administration, or by other primary evidence of the grant; and where an administration of the real estate is sought, it must be shown that the whole of the real estate is vested in the person sued as its representative; see Dan. Pr. 1073. For form of notice to the defendant to produce the probate or letters, see *ante* No. 897.

(*z*) See Dan. Pr. 1073.

household furniture and effects bequeathed to me as aforesaid have not yet been delivered to me.

Or, The legacy of £100 bequeathed to me as aforesaid remains due to me from the said testator's estate.

Or, The share of residue bequeathed to me as aforesaid has not been accounted for or paid to me.

Or, I am now entitled to the said annuity of £20 bequeathed to me as aforesaid; but no provision to secure the due payment thereof has been made [*or as may be*].

4. [*Show means of knowledge.*]

949.

Affidavit in support of an administration summons by a next of kin (*a*).

Formal parts: see ante No. 693.

[*State the death of the person whose estate is to be administered, and show that the applicant is one of his next of kin: as thus:*] 1. The above-named John Thomas died on or about the —— day of ——. 187—, a bachelor, and intestate; and without leaving any father, mother, sister, or brother him surviving.

2. The said John Thomas was the son of Charles Thomas, late of, *&c.* The said Charles Thomas had two children only; that is to say: (1) the said intestate John Thomas; and (2) my father Francis Thomas.

3. The said Francis Thomas died on or about the —— day of ——, 187—. The said Francis Thomas had three children only; that is to say: (1) my brother the defendant Edward Thomas; (2) my sister Mary, now the wife of William Hughes, of, *&c.*; and (3) me the deponent.

4. As a child of the intestate's said brother Francis Thomas, I claim to be one of the next of kin of the said intestate John Thomas; and, as such, to be entitled to a distributive share of his personal estate. Such share has not been paid or accounted for to me.

[*Show that the defendant is the proper person to be sued; as thus:*] 5. Letters of administration of the personal estate of the said John Thomas have been granted by the Principal Registry [*or as may be*] of the Probate Division of Her Majesty's High Court of Justice to the defendant Edward Thomas [*or as may be*].

950.

The like, by a person interested in real estate (*a*).

Formal parts: see ante No. 693.

[*State, succinctly, the nature of the applicant's interest under the will, and the persons to be sued; as thus:*] 1. The above-named John Thomas, by his will dated the —— day of ——, 187—, devised all his real estate to the defendant Edward Styles, upon trust to sell and convert the same into money, and invest such money as therein mentioned; and to pay the income to accrue from such investment unto the testator's wife, Louisa Thomas, for her life; and after her death, to raise the sum of £1,000,

(*a*) See Dan. Pr. 1073.

out of the said trust estate, and pay the same to me, on my attainment of the age of twenty-one years; and the said testator appointed the defendant William Jackson executor of his will.

2. The said testator died on the —— of ——, 187—, without having revoked or altered his said will; and probate of the said will was on the —— day of ——, 187—, granted by the Principal Registry [*or as may be*] of the Probate Division of Her Majesty's High Court of Justice to the defendant William Jackson.

3. The defendant Edward Styles accepted the trust reposed in him by the said will; and he converted the testator's real estate into money, and made certain investments out of the proceeds thereof.

4. The testator's widow, the said Louisa Thomas, died on the —— day of ——, 187—; and I attained my age of twenty-one years on the —— day of ——, 187—.

5. I am now entitled to receive the said sum of £1,000; but the defendant Edward Styles refuses or neglects to pay the same to me.

6. [*Show means of knowledge.*]

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951. Other forms incident to an administration summons.

Note of the enlargement of the return: No. 866 *ante*.

Summons to amend: No. 867 *ante*.

Direction to amend duplicate: 868 *ante*.

Præcipe on stamping, or re-stamping, copy for service: No. 869 *ante*.

Summons for substituted service, and affidavit in support: Nos. 870, 871 *ante*.

Summons for leave to serve abroad, and affidavit in support: Nos. 872, 873 *ante* (*c*).

Affidavit of service: No. 874 *ante* (*d*). The like on a substitute: No. 875 *ante*.

Notice to produce probate or letters of administration, on return of summons: No. 897 *ante* (*d*).

Præcipe for appearance: No. 877 *ante* (*d*). Notice of appearance: No. 878 *ante* (*d*).

Notice that summons will be attended by counsel: No. 879 *ante*.

Staying proceedings on an administration summons: see *post* Nos. 1772 to 1774 (*f*).

Memorandum for the registry, or re-registry of a summons, as a lis pendens: No. 277 *ante*. Acknowledgment of satisfaction thereof: No. 278 *ante*. Petition of course, special petition, notice of motion, and summons for the entry of satisfaction thereof: Nos. 279 to 281 *ante* (*h*).

(*c*) See Dan. Pr. 1073. For order for leave to serve an administration summons in Scotland, see *Re Fobert, Wood* v. *Fobert*, V.-C. M. at Chambers, 12 Feb. 1870, Reg. Lib. A. 267.

(*d*) See Dan. Pr. 1074.

(*f*) See Dan. Pr. 1075, 1076.

(*h*) *Ibid.*, 1073, note (*m*).

(2.) *Accounts of Debts and Liabilities, under* 13 & 14 *Vict. c.* 35 (*j*).

952.

Motion paper for an order to take the account (*k*).

In the High Court of Justice,
Chancery Division (*l*).
[*Name of Judge* (*ll*).]

In the matter of the estate of [*State name, and late residence and addition of the deceased person; as thus:*] John Thomas, late of No. 200, Russell Square, in the county of Middlesex, esquire, deceased.

Mr. G.

$\frac{1}{2}$ gua.

To move on behalf of A. B., and C. D., the executors [*Or*, administrators] of the said John Thomas, for the usual order to take an account of his debts and liabilities, under 13 & 14 Vict. c. 35, s. 19, and 23 & 24 Vict. c. 38, s. 14.

An affidavit in support accompanies (*m*).

953.

Summons for an order to take the account (*n*).

[*Proceed as in* No. 952 *ante, to* "deceased," *and continue:*]

Let all parties concerned [*Continue as in* No. 865 *ante, to*

(*j*) As to the jurisdiction to direct, on *ex parte* motion, or summons, an account to be taken of the debts and liabilities affecting the personal estate of a deceased person, see Dan. Pr. 1076—1082; 13 & 14 Vict. c. 35, ss. 19—25; 23 & 24 Vict. c. 38, s. 14; and see *post* No. 953 note (*n*). The account may be ordered to be taken in a district registry; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66; *supra*, note (*a*) at p. 468. As to the proof of and provision for debts and liabilities, see Dan. Pr. 1078, *et seq.*; and as to interest, and costs of proof, and debts generally, see *post* No. 977, note (*m*).

(*k*) See Dan. Pr. 1077; 13 & 14 Vict. c. 35, s. 19; 23 & 24 Vict. c. 38, s. 14. For orders in like case, see *Re Forbes*, M. R. 4 Dec. 1866, Reg. Lib. A. 2538; and Seton, ed. 3, 147. The form of order set out in the sched. to 13 & 14 Vict. c. 35, is, in practice, abridged and varied as in Seton, ed. 3, 147; Dan. Pr. 1078, note (*d*).

(*l*) Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11; R. S. C. Ord. V. 4.

(*ll*) Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 33, 42; R. S. C. Ord. V. 4, 4*a* (R. S. C. June, 1877); Cons. Ord. VI. 6; note (*c*) to No. 210 *ante*. The matter may not, until further order, be assigned to Mr. J. Fry; Ord. of L. C. June, 1877; note (*c*) to No. 210 *ante*.

(*m*) See *post* No. 954.

(*n*) See Dan. Pr. 1077; 13 & 14 Vict. c. 35, s. 19; 23 & 24 Vict. c. 38, s. 14. By the Chancery (Ireland) Act, 1867 (30 & 31 Vict. c. 44), s. 52, it is enacted that the parts of Acts set out in Sched. A thereto shall be thereby repealed; and the schedule includes s. 14 of 23 & 24 Vict. c. 38, which conferred the jurisdiction to make the order on summons; orders have, however,

noon (*o*)], on the hearing of an application on the part of A. B., of [*residence and addition*], and C. D., of, *&c.*, the executors [*Or*, administrators] of the said John Thomas, that an account may be directed to be taken of the debts and liabilities affecting the personal estate of the said John Thomas: with the usual directions. Dated [*&c.: Continue as in* No. 865 *ante, to* "solicitors for the applicant."]

954.

Affidavit in support of motion or summons (*p*).

Formal parts: see ante No. 693.

1. I am the executor [*Or*, one of the executors] of the will
Or, I am the administrator [*Or*, one of the administrators] of the personal estate
of the above-named John Thomas, acting under probate of the said will
Or, letters of administration of the said estate
granted by the Principal Registry [*or as may be*] of the Probate Division of Her Majesty's High Court of Justice, on the —— day of ——, 187— (*q*).

2. The said John Thomas died on or about the —— day of ——, 187—.

3. There is not any suit or other proceeding now pending for the administration of the estate of the said John Thomas: to the best of my knowledge, information, and belief.

955.

Summons to proceed under the order (*r*).

Formal parts: see ante No. 881.
on the part of A. B., and C. D., in the order dated the —— day of ——, 187—, named, to proceed with the account thereby directed to be taken.

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since been made under that section on summons; see *Re Sutton*, V.-C. S. at Chambers, 20 Dec. 1869, Reg. Lib. B. 3065; *Re Marshall*, M. R. at Chambers, 27 July, 1870, Reg. Lib. B. 2201; and see Dan. Pr. 1077, note (*y*). A duplicate of the summons must be filed at the Record and Writ Clerks' office; but no copy for service is necessary, as the application is always made *ex parte*. For the practice as to preparing and issuing the summons, and filing the duplicate, see Dan. Pr. 1050, 1051; and note (*b*) at p. 468 *ante*. As to the fees payable on the summons and duplicate, see *ante*, note (*b*), at p. 468.

(*o*) The summons may be made returnable at any time after it is issued; Dan. Pr. 1077.

(*p*) See Dan. Pr. 1078.

(*q*) The probate or letters of administration must be produced to the Registrar on the motion, or to the Chief Clerk on the hearing of the summons; see Dan. Pr. 1078.

(*r*) See Dan. Pr. 1078; Cons. Ord. XXXV. 15, 16. As to the proceedings under the order at Chambers, see Dan. Pr. 1078.

956. Advertisement for claimants to send in particulars of their claims (*s*).

Pursuant to an order of the High Court of Justice, made in the matter of the estate of John Thomas, late of No. 200, Russell Square, in the county of Middlesex, esquire [*or as may be*], deceased, the creditors and other persons claiming debts or liabilities affecting the personal estate of the said John Thomas: who died [*Continue as in* No. 977 *post, to the end*].

957. Notice of particulars of a claim (*t*).

[*Same as* No. 978 *post.*]

958. Notice of motion for payment of certified debts (*y*).

Formal parts: see post No. 1571.

on the part of E. F., in the Chief Clerk's certificate made in this matter, and dated the —— day of ——, 187—, named, that A. B., and C. D., the executors of the will,

Or, administrators of the personal estate

of the above-named John Thomas, may be ordered to apply the personal estate of the said John Thomas in payment and satisfaction of such of his debts by the said Chief Clerk's certificate certified to be due to the said E. F., and the other persons therein named, as remain unpaid, in a due course of administration. Or, that the usual accounts may be directed to be taken of the personal estate of the said John Thomas: with all usual and proper directions. And that provision may be made for payment by the said A. B., and C. D., or out of the assets of the said John Thomas, of the costs of the said E. F. of this application.

959. Petition for payment of certified debts (*z*).

Formal parts: see post No. 1578.

The humble petition of E. F., of [*residence and addition*].

(*s*) See Dan. Pr. 1078; Ord. 27 May, 1865, rules 1, 16. The form of advertisement here given is adapted from form No. 1, in Sched. 2, to Ord. 27 May, 1865: which may be used with such variations as the circumstances of the case may require; *Ibid.*, rule 1. As to the advertisement having the force and effect of a notice given under 22 & 23 Vict. c. 35, s. 29, see 23 & 24 Vict. c. 38, s. 14; Dan. Pr. 1081. As to fixing a time for adjudicating on the claims, see Dan. Pr. 1078; and as to the procedure in examining, proving, and adjudicating on the claims, see *Ibid.*, and *post* No. 978 *et seq.*, and notes thereto. As to the Chief Clerk's certificate of the result of the account, and as to applications to take the Judge's opinion on, or to discharge or vary, the certificate, see Dan. Pr. 1078, 1079; 13 & 14 Vict. c. 35, ss. 20, 21; 23 & 24 Vict. c. 38, s. 14; and *post* Nos. 1238 *et seq.* If the proceeding is taken on the higher scale, a fee of £1 is payable by means of a stamp impressed upon the advertisement; on the lower scale no fee is payable; Ord. as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522.

(*t*) See Dan. Pr. 1078.

(*y*) See Dan. Pr. 1080; 13 & 14 Vict. c. 35, s. 22.

(*z*) See Dan. Pr. 1080; 13 & 14 Vict. c. 35, s. 22.

Showeth as follows :

1. By an order, dated the —— day of ——, 187—, made in this matter, on the application of A. B., and C. D., the executors of the will of the above-named John Thomas [*or as may be*], it was ordered that [*Recite the order directing an account of debts and liabilities to be taken*].

2. The Chief Clerk of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], has made his certificate, dated the —— day of ——, 187—, in pursuance of the said order ; and has thereby certified that [*Recite the material parts of the certificate*].

3. The said certificate was approved by the said Judge, on the —— day of ——, 187— ; and was filed on the —— day of ——, 187—.

4. The schedule of debts to the said Chief Clerk's certificate includes a debt of £—— due to your petitioner from the estate of the said John Thomas : which debt remains unpaid ; and your petitioner believes that many other of the debts, and of the liabilities certain, comprised in the said schedule, also remain unpaid and unprovided for.

Your petitioner therefore humbly prays, that the said A. B., and C. D., may be ordered to apply the personal estate [*&c. : Continue as in* No. 958 *ante, to the end : substituting* "your petitioner," *for* "the said E. F."].

Or that [*Conclude as in* No. 1578 *post, and add foot note,* No. 1579].

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960. Notice of motion to deposit a fund to answer a contingent liability (*a*).

Formal parts : see post No. 1571.

on the part of A. B., and C. D., the executors of the will [*Or*, administrators of the personal estate] of the above-named John Thomas :

1. That they may be at liberty to pay into Court, to the credit of Re John Thomas's Estate, 187—, T. No. 50, to an account to be intituled "Fund to answer the testator's contingent liability to E. F.," the sum of £—— ; and that the same may be invested in consolidated £3 per cent. annuities, and the dividends thereon accumulated.

2. That the said fund may be deemed to be a fund set apart and appropriated out of the estate of the said John Thomas to answer the contingent liability to E. F., by the Chief Clerk's certificate, dated the —— day of ——, 187—, allowed in respect of the covenant entered into by the said John Thomas with him, as therein mentioned [*or as the facts may be*].

3. That any person interested in the said fund may be at liberty to apply, as he may be advised.

(*a*) See Dan. Pr. 1080 ; 13 & 14 Vict. c. 35, s. 23. As to the payment out of Court of an indemnity fund, before the liability is satisfied, see *Crook* v. *Hendry*, 26 W. R. 325.

961.
Petition for the like (*b*).

Formal parts : see post No. 1578.

The humble petition of A. B., and C. D., the executors of the will [*Or*, administrators of the personal estate] of the above-named John Thomas.

Showeth as follows :

1. 2. 3. By an order [*Continue as in paragraph* 1, *of* No. 959 *ante, to the end of paragraph* 3].

4. The schedule to the said Chief Clerk's certificate includes a contingent liability which the estate of the said John Thomas is under, by reason of a covenant entered into by him with E. F. to indemnify the said E. F. against any claim or demand by G. K., as therein mentioned [*or as the facts may be*].

5. Your petitioners are desirous that the sum of £—— should be set apart and appropriated out of the assets of the said John Thomas, to answer the said contingent liability ; and be paid into Court as hereinafter mentioned.

Your petitioners therefore humbly pray, that they may be at liberty [*Continue as in paragraph* 1, *of* No. 960 *ante, to* "contingent liability," *in paragraph* 2 *; and conclude thus :*] hereinbefore mentioned ; and that any person interested in the said fund may be at liberty to apply, as he may be advised

Or that [*Conclude as in* No. 1578 *post, and add foot note,* No. 1579].

Section III.—Proceedings under Judgments and Orders (*d*).

(1.) *Conduct of Cause or Proceedings* (*e*).

962.
Summons by a creditor for conduct of suit of another creditor (*f*).

Formal parts : see ante No. 881.

on the part of A. B., of [*residence and addition*] : who has been allowed by the Chief Clerk as a creditor upon the estate of C. D., the testator [*Or*, intestate] in the judgment [*Or*, order], dated the —— day of ——, 187—, named [*Or*, who claims to be a creditor upon the estate, *&c.*] : that the future conduct of this cause may be committed to the applicant.

(*b*) See note (*a*) to No. 960 *ante*.
(*d*) See Dan. Pr. 1082—1188.
(*e*) *Ibid.*, 1082—1084.
(*f*) *Ibid.* 1083. For order in like case, see Seton, ed. 3, 138, No. 7.

963. Notice of motion or summons for the conduct of a creditors' suit, stayed as to the plaintiff only (*g*).

Formal parts: see post No. 1571, *or ante* No. 881.
on the part of A. B. [*Continue as in* No. 962 *ante, to* cause; *and conclude thus:*] proceedings in which on the part of the plaintiff therein were stayed by an order, dated the —— day of ——, 187—: may be committed to the said A. B.

964. Summons by a legatee, for conduct of suit of another legatee (*h*).

Formal parts: see ante No. 881.
on the part of A. B., of [*residence and addition*]: who claims to be interested in the matters in question in this cause as a residuary legatee [*or as may be*] under the will of C. D., the testator in the judgment [*Or*, order], dated the —— day of ——, 187—, named: that the future conduct of this cause may be committed to him.

965. Summons for conduct of suit to be given to a defendant, or a person having liberty to attend (*i*).

Formal parts: see ante No. 881.
on the part of the defendant (*k*),
Or, of A. B.: who, by an order dated the —— day of ——, 187—, has liberty to attend the proceedings under the judgment [*Or*, order], dated the —— day of ——, 187—, in this cause (*l*),
that the future conduct of this cause may be committed to him.

966. Summons by active plaintiffs for conduct of cause, where co-plaintiff refuses to proceed (*m*).

Formal parts: see ante No. 881.
on the part of A. B., and C. D., two of the above-named plaintiffs, that the applicants may have the sole conduct of this cause.

(*g*) See Dan. Pr. 215, 695, 1083. For order in like case, see *Re Wesson, Salter* v. *Tildesley*, M. R. at Chambers, 16 Feb. 1866, Reg. Lib. B. 220.

(*h*) See Dan. Pr. 1083.

(*i*) For order in two infants' suits, giving the conduct of the judgment in the second suit to the next friend in the first, on behalf of the infant plaintiff, see *Frost* v. *Ward*, L.JJ., 13 Jan. 1864, Reg. Lib. A. 36.

(*k*) For order in like case, see *Dodd* v. *Bates*, V.-C. S. at Chambers, 23 July, 1866, Reg. Lib. A. 2022.

(*l*) For orders in like case, see *Belchier* v. *Belchier*, V.-C. K. (on adjournment into Court), 24 June, 1865, Reg. Lib. A. 1257; *Tayler* v. *Tayler*, M. R. at Chambers, 12 Jan. 1869, Reg. Lib. B. 34.

(*m*) See Dan. Pr. 331, note (*z*). For order in like case, see *Butlin* v. *Arnold*, V.-C. W. at Chambers, 4 April, 1864, Reg. Lib. A. 699; and see S. C. 1 H. & M. 715. The summons must be served on the co-plaintiff; but need not be served on the defendants; *Butlin* v. *Arnold*, 1 H. & M. 715.

966 a.
Notice of motion or summons that accounts and inquiries may be prosecuted in district registry (*mm*).

Formal parts : see post No. 1571, *or ante* No. 881.
on the part of the plaintiff [*or as may be*] that the accounts and inquiries directed to be taken and made by the judgment [*Or*, order] dated the —— day of ——, 187—, may be so taken and made in the office of or by the Registrar of the district registry at ——.

(2.) *Carrying in Judgment or Order* (*n*).

967.
Certificate verifying copy of judgment or order for chambers (*o*).

We [*Or*, I] certify, that the above is a true copy of the original [*Or*, of an office copy of the original] judgment [*Or*, order], as passed and entered. Dated this —— day of ——, 187—.
[*Add name, &c., of solicitor or party leaving the copy ; see ante* No. 92.]

(3.) *Summons to proceed* (*p*).

968.
Summons to proceed under a decree or order (*p*).

Formal parts : see ante No. 881.
on the part of the plaintiff,
Or, defendant A. B.,
Or, of the petitioner [*Or*, respondent] named in the order, dated the —— day of ——, 187—,
Or, of A. B., who, by an order dated the —— day of ——, 187—, has liberty to attend the proceedings,
Or, of A. B., to whom, by an order dated the —— day of ——, 187—, the future conduct of this cause has been committed ; *or as may be*,
to proceed with the accounts and inquiries
Or, with the sale
Or, with the apportionment
Or, to settle the draft of the conveyance
Or, to settle the draft of the mortgage
Or, to settle the draft of the lease ; *or as may be*,
directed by the judgment [*Or*, order], dated the —— day of ——, 187—.

(*m m*) See the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66 ; and the cases thereon, cited *supra*, note (*a*) at p. 468. As to the powers and jurisdiction of a district registrar, see Sup. Cot. Jud. Act, 1873, ss. 64, 66 ; R. S. C. Ord. XXXV. 1*a* (R. S. C. June, 1876, rule 12), 4, 6, 7, 9, 10 ; and the cases thereon, cited *supra*, note (*d*) to No. 210. Applications to a district registrar are made by summons ; R. S. C. Ord. XXXV. 5 ; *Ibid.* Ord. LIV. 1. The costs allowed in a district registry are the same as those allowed in London ; R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 34.

(*n*) See Dan. Pr. 1084.

(*o*) *Ibid.* ; Cons. Ord. XXXV. 15. As to the time allowed for bringing a judgment or order into Chambers, see Cons. Ord. XXXV. 22. As to office copies, see Dan. Pr. 879.

(*p*) See Dan. Pr. 1085 ; Cons. Ord. XXXV. 16.

969.

Note of the names of the solicitors concerned, to be left at chambers (*q*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

The names of the solicitors concerned, and for whom, in this cause [*Or*, matter], are as follows :

Names of Solicitors.	For whom concerned.
Messrs. A. & B.	Plaintiff [*Or*, Petitioner].
Mr. C. D.	Defendant [*Or*, Respondent] E. F.
Mr. G. H.	Defendant [*Or*, Respondent] L. M.
Mr. N. O.	P. Q., having liberty to attend the proceedings.

NOTE.—The defendant R. S. appears in person.
The defendant T. U. has not appeared.
[*Name, &c., of solicitor or party leaving the note; as in* No. 92 *ante.*]

(4.) *Directions as to prosecution* (*r*).

970.

Certificate verifying copy for chambers of certificate of entry of memorandum of service (*s*).

In Chancery.
[*Short title, and reference to the record.*]

We [*Or*, I] certify, that this is a true copy of the original certificate, signed by the Clerk of Records and Writs. Dated this —— day of ——, 187—.
[*Name, &c., of solicitor or party leaving the copy; as in* No. 92 *ante.*]

(*q*) See Dan. Pr. 1085 ; Regul. 8 Aug. 1857, rule 5. In an action a print of the pleadings is also required to be left ; see Dan. Pr. 1085, and note (*t*) ; Regul. 8 Aug. 1857, rule 6.

(*r*) See Dan. Pr. 1085 ; Cons. Ord. XXXV. 16. For the practice as to service and dispensing with service of notice of the judgment, see Dan. Pr. 358 *et seq.* ; *ante* pp. 17—27. For form of certificate verifying copy, for Chambers, of order for leave to attend proceedings, see *ante* No. 967.

(*s*) See Dan. Pr. 1086 ; Regul. 8 Aug. 1857, rule 8. For form of certificate of entry of the memorandum, see *ante* No. 33.

(5.) *Parties entitled to attend* (*t*).

971.

Summons by a creditor, or other person interested, for leave to attend the proceedings (*u*).

Formal parts: see ante No. 881.

on the part of A. B., of [*residence and addition*]: whose claim to be a creditor upon the estate of C. D., the testator [*Or*, intestate], in the judgment [*Or*, order], dated the —— day of ——, 187—, named, has been allowed by the Chief Clerk:

Or, who claims to be interested in the matters in question in this suit, as an annuitant under the will of C. D., the testator in the judgment, *&c.*, named:

Or, the assignee of the interest of the defendant E. F., in the residuary estate of C. D., the testator in the judgment, *&c.*, named—*or as may be:*

that the applicant may be at liberty to attend the proceedings under the (said) judgment [*Or*, order], dated, *&c.*

Or, under the account numbered 5—*Or*, inquiry numbered 6—directed by the judgment, *&c.*

And that the plaintiff [*or other person having the carriage of the proceedings*] may be directed to give notice, from time to time, to the applicant [*Or*, to Mr. G. H., of, *&c.*, the applicant's solicitor] of all proceedings to be had and taken under the said judgment [*Or*, order],

Or, under the said account [*Or*, inquiry],

and otherwise in and about this cause [*or as may be*], until further order.

972.

Order for leave for creditors to attend the proceedings in a suit, on special terms (*x*).

Formal parts.

It is ordered that the applicants, the L. and C. B. Company: who have proved a debt against the estate of J. S., the intestate in

(*t*) For the rules as to the parties entitled to attend the proceedings under a judgment or order, see Dan. Pr. 1086, 1087. As to the power of the Judge to nominate one solicitor for a class, see *Ibid.* 1087; Cons. Ord. XXXV. 20; and to require parties to be represented by a distinct solicitor, see Dan. Pr. 1089; Cons. Ord. XXXV. 21.

(*u*) See Dan. Pr. 243, 1088. For forms of motion paper, and petition of course, that parties served with notice of a judgment or an order may be at liberty to attend the proceedings thereunder, see *ante* Nos. 34, 35, 84, 85, 151, 152; and see the notes thereto. As to the right of parties attending to take or be furnished with copies of documents, and at whose expense, see Dan. Pr. 1088; Cons. Ord. XXXV. 26.

(*x*) *Norris* v. *Sadleir*, M. R. at Chambers, 14 Jan. 1864, Reg. Lib. B. 191. For order giving leave to mortgagees of a defendant's interest to attend proceedings, and directing notice of all proceedings to be given to them, or their solicitors, but reserving the question of costs of and occasioned by the application, see *Re Praugnall, Cleverly* v. *Cleverly*, M. R. at Chambers, 8 Mar. 1870. Reg. Lib. B. 634.

the judgment, dated the —— day of ——, 187—, named: be at liberty, at their own expense, to attend all proceedings relating to the accounts directed to be taken by the said judgment, and the settlement of the Chief Clerk's certificate thereunder; and that notice of all such proceedings be given to the said Company: they, by their solicitors, undertaking to pay the costs of such notice, in such manner as the Judge shall direct.

(6.) *Additional Accounts or Inquiries* (*y*)

973. Summons for additional accounts or inquiries (*z*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be: see ante* No. 968], that in addition to the accounts (and inquiries) directed by the judgment [*Or*, order], dated the —— day of ——, 187—, the following accounts (and inquiries) may be directed to be taken (and made); that is to say: [*Set them out in numbered paragraphs* (*a*)*; as in the following examples:*]

11. An account of the rents and profits of the testator's real estate received by the defendant C. D., or by any person or persons by his order, or for his use.

12. An inquiry whether the children of the testator, or any of them, have created any and what incumbrances upon their respective shares of the testator's real and personal estate.

(7.) (8.) *Particular Proceedings.—Inquiries.—Claims* (*b*).

974. Advertisement for claimants (other than creditors of a deceased person) to come in and prove their claims (*c*).

Pursuant to a judgment [*Or*, an order] of the High Court of Justice, made in [*Set out the short title of the matter or cause, and the reference to the record, if any; as thus:*]

the matter of the trusts of an indenture, dated the 4th January, 1860, between A. B. and C. D.,

Or, a cause Jones against Styles (187—, J. No. 5),

(*y*) As to when additional accounts or inquiries may be directed, see Dan. Pr. 1089, 1090; Cons. Ord. XXXV. 19; and see 15 & 16 Vict. c. 86, s. 42, rule 8; 31 & 32 Vict. c. 40, s. 9; Cons. Ord. XXIII. 18; and Dan. Pr. 363, as to adding to a judgment on the application of a party served with notice of it.

(*z*) See Dan. Pr. 1090. For orders in like case, see *Biggs* v. *Walford*, M. R. at Chambers, 25 Jan. 1864, Reg. Lib. A. 98; *Sharp* v. *Wright*, M. R. at Chambers, 23 Jan. 1867, Reg. Lib. B. 151; Seton, ed. 3, 160, No. 3; 233, No. 5.

(*a*) The additional accounts and inquiries should be numbered consecutively, in continuation of the numbers in the original judgment or order; Dan Pr. 1090; and see *Ibid.*, 1084; Regul. 8 Aug. 1857, rule 4.

(*b*) As to the purposes for which proceedings are taken at Chambers, see Dan. Pr. 1090, 1091. As to the prosecution of inquiries in a district registry, where so ordered by the Court or a Judge, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66; *supra* note (*a*) at p. 468. As to claims for debts or liabilities, under 13 & 14 Vict. c. 35, see *ante* No. 952 *et seq.*; and as to claims in other cases, see generally, Dan. Pr. 1091 *et seq.*; Cons. Ord. XXXV.; Ord. 27 May, 1865. For form of a concise statement, see *ante* No. 941.

(*c*) See Dan. Pr. 1092. The form here set out is adapted from that given

[*State the special object of the advertisement; as thus:*]

the persons claiming to be the heir at law of A. B., late of [*residence and addition*], living at the time of the said A. B.'s death on the —— day of ——, 187—,

Or, the persons claiming to be the heir according to the custom of the manor of Talleshunt, in the county of Sussex, of A. B., late of [*&c.: as above*],

Or, the persons claiming to be next of kin, according to the statutes for the distribution of intestates' estates, of A. B., late of, *&c.*, living at the time of his death on the —— day of ——, 187—, or to be the legal personal representatives of such of the said next of kin as are now dead,

Or, the persons claiming to be interested under a certain indenture, dated the —— day of ——, 187—, executed by A. B., then of, *&c.*, for the benefit of his creditors,

Or, the persons claiming to be entitled to the legacy of £1,000 bequeathed by the will of the testator, Isaac Brown, late of Bath, in the county of Somerset, gentleman, to the child or children of his nephew, William Saunders,

Or, the charitable institutions and persons claiming to be entitled to the sum of £500 consolidated £3 per cent. annuities in Court, to the credit of this matter [*Or*, cause] to an account, entitled, "Legacy bequeathed to the Poor Widows' Society, near London,"

Or, the persons claiming to be entitled to any mortgage, charge, or other incumbrance upon or affecting the legacy of £1,000, bequeathed to John Jones, now or late of [*residence and addition*], by the will of his father, Ephraim Jones, late of [*residence and addition*], who died on or about the —— day of ——, 187— (*d*),

are, by their solicitors, on or before the —— day of ——, 187—, to come in and prove their claims, at the Chambers of the Master of the Rolls, in the Rolls' Yard, Chancery Lane, Middlesex [*or as may be*]: Or, in default thereof, they will be peremptorily excluded (*e*) from the benefit of the said judgment [*Or*, order].

(Monday), the —— day of ——, 187—, at —— of the clock in

by Cons. Ord. Sched. L., which may be used with such variations as the circumstances of the case may require; Cons. Ord. XXXV. 37. For forms of advertisement for the creditors of a deceased person to come in, see *ante* No. 956, and *post* No. 977. As to when an advertisement for claimants will be issued, and as to the preparation, issuing, and publication thereof, see Dan. Pr. 1091, 1092; Cons. Ord. XXXV. 12, 35—37. As to the fee payable thereon, see *ante* No. 956, note (*s*). As to the costs of persons establishing their claims under a judgment or order, see Dan. Pr. 1108.

(*d*) For forms of affidavit by the beneficiary, and the executor or trustee, in answer to an inquiry as to incumbrances, see *post* Nos. 999, 1000.

(*e*) See Cons. Ord. XXXV. 12; but see Cons. Ord. XXXV. 41, and Dan. Pr. 1093, where the adjudication is adjourned. As to the effect of the clause of exclusion, see Dan. Pr. 1101, 1102.

the —— noon, at the said Chambers, is appointed for hearing and adjudicating upon the claims (*f*).

Dated this —— day of ——, 187—.

R. M., Chief Clerk.

Let this advertisement be inserted in the next London Gazette (*g*)

R. M.

975.

Notice of having entered a claim (*h*).

Formal parts : see ante No. 21.

Take notice that I have this day entered, in the "Claims Book" at the Chambers of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], a claim, numbered —— (*i*), on behalf of C. D., of [*residence and addition*], to be [*State what; as thus :*]

the heir-at-law of the testator A. B.

Or, one of the next of kin of the intestate A. B.

976.

Affidavit in answer to an inquiry as to heirship and kindred.

Formal parts : see ante No. 693.

1. John Hughes, late of [*residence and addition*], the intestate in the judgment [*Or*, order] in this cause [*Or*, matter], dated the —— day of ——, 187—, named, was my son.

2. The said John Hughes died on the —— day of ——, 187—. He is the same person as "John Hughes," in the certificate marked A. (*j*), now produced and shown to me, named ; and purporting to be a copy of an entry of his burial in the register book

(*f*) As to an adjournment of the adjudication, see Cons. Ord. XXXV. 40 ; Dan. Pr. 1093.

(*g*) See Dan. Pr. 1092 ; Cons. Ord. XXXV. 36. The printers of other newspapers will insert the advertisement, on copies being left with them. The signature of the Chief Clerk to such copies is not required. The copies should include copies of the Chief Clerk's signature ; and it is usual and desirable to add thereto the name and place of business, and address for service, if any, of the solicitor or party inserting the advertisement ; see Dan. Pr. 1092, note (*u*).

(*h*) See Dan. Pr. 1092 ; Cons. Ord. XXXV. 38. The notice must be given to the solicitors in the cause, within the time specified in the advertisement for bringing in claims ; *Ibid.* ; but see, as to the entry of a claim, subsequent to an adjourned adjudication, Cons. Ord. XXXV. 41 ; Dan. Pr. 1093. For form of motion paper for leave to prosecute a claim *in formâ pauperis*, see *ante* No. 201.

(*i*) The notice must state the number of the entry of the claim ; Regul. 8 Aug. 1857, rule 9.

(*j*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

of burials kept for the parish of W., in the county of Y., for the year 187—.

3. The said John Hughes was married twice only, namely: (1) On the —— day of ——, 18—, to Laura Thornton, at the parish church of S., in the city of T.; and (2) on the —— day of ——, 18—, to Jane Watts, at the parish church of P., in the county of R.

4. The said John Hughes and Laura Thornton are the same persons as "John Hughes," bachelor, and "Laura Thornton," spinster, respectively named in the certificate, marked B. (*j*), now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages kept for the said parish of S., for the year 18—.

5. The said Laura Thornton, then Laura, the wife of the said John Hughes, died on the —— day of ——, 18—. She is the same person as "Laura Hughes," in the paper writing, marked C. (*j*), now produced and shown to me, named; and purporting to be a copy, under the seal of the General Register Office, of the entry No. ——, in the certified copy of entries of deaths in the district of K., in the county of L., for the year 18—.

6. The said John Hughes and Jane Watts are the same persons as "John Hughes," widower, and "Jane Watts," widow, respectively named in the paper writing, marked D. (*j*), now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages kept for the said parish of P., for the year 18—.

7. The said John Hughes had two children only by his wife, Laura Hughes, formerly the said Laura Thornton; namely: (1) Albert Hughes, who was born on the —— day of ——; and (2) Maria Hughes, who was born on the —— day of ——.

8. The said Albert Hughes is the same person as "Albert, son of John and Laura Hughes," in the paper writing, marked E. (*j*), now produced and shown to me, named; and purporting to be a copy under the seal [*&c.; as in paragraph* 5 : *substituting* births, *for* deaths.]

9. The said Maria Hughes is the same person as "Maria, daughter of John and Laura Hughes," in the paper writing, marked F. (*j*), now produced and shown to me, named; and purporting to be a copy, under the seal [*&c.: as last above*].

10. The said Maria Hughes has been married once only; namely: on the —— day of ——, to Thomas Jones, of [*residence and addition*], at the parish church of N., in the city of O. They are the same persons as "Thomas Jones," bachelor, and "Maria Hughes," spinster, respectively named in the paper writing, marked G. (*j*), now produced and shown to me; and purporting to be a copy of an entry of their marriage in the register book of marriages for the said parish of N., for the year 187—.

11. The said John Hughes had no child by his wife, Jane Hughes, formerly the said Jane Watts, and now his widow.

(*j*) Exhibit it For form of memorandum of exhibit, see *ante* No. 723.

12. The said Jane Hughes and Albert Hughes, and the said Thomas Jones and Maria his wife, formerly the said Maria Hughes, are respectively now living.

13. [*Show means of knowledge* (*l*).]

977.

Advertisement for the creditors of a deceased person to come in, under Gen. Ord. 27 May, 1865 (*m*).

Pursuant to a judgment [*Or*, an order] of the High Court of Justice, made in [*Set out the short title of the matter or cause; as thus:*]

the matter of the estate of A. B., and in a cause S. against P. (187—, B. No. 10),

the creditors of A. B., late of [*residence and addition; as thus:*]

No. 6, West Terrace, Camberwell, in the county of Surrey, gentleman:

who died in or about the month of ——, 187— : are, on or before the —— day of ——, 187— (*n*), to send, by post, pre-paid, to Mr. E. F., of [*place of business*],

Or, to Messrs. E. & F., of, *&c.*,

Or, to Mr. E. F., of, *&c.*, a member of the firm of F. & G., of the same place,

the solicitor [*Or*, solicitors] of the defendant C. D., the executor [*Or*, administrator] of the deceased [*or as may be directed* (*o*)], their christian and surnames, addresses, and descriptions, the full particulars of their claims, a statement of their accounts, and the

(*l*) The deponent's means of knowledge of the facts deposed to should be clearly and fully stated. If he was present at any of the events narrated, that fact should be set forth at the end of the paragraph to which it refers; as thus: "I was present at the said marriage [*Or*, baptism; *Or*, death]."

(*m*) See Dan. Pr. 1094; Ord. 27 May, 1865, rule 1. The form here given is adapted from the form in Sched. 2, No. 1, to Ord. 27 May, 1865, which may be varied as the circumstances of the case may require; *Ibid.*, rule 1. As to the proof, in an administration suit, of a debt becoming due between the testator's death, and the Chief Clerk's certificate, and as to the proof of and provision for liabilities, see Dan. Pr. 1098, 1099; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 10. As to setting up the Statutes of Limitations as a bar, see *Ibid.*, 1099. As to the course open to a creditor whose claim is disallowed, see *Ibid.*, 1102. As to the computation and payment of interest on debts not carrying interest, see *Ibid.*, 1103, 1105; Cons. Ord. XLII. 9, 10; and on specialties and debts carrying interest, Dan. Pr. 1103, 1104; and on debts accruing due after the judgment, *Ibid.*, 1105. As to the computation of interest with rests, see *Ibid.*, 1107. As to the right of the creditor to the costs of establishing his debt, see *Ibid.*, 1108; Cons. Ord. XL. 24. As to contribution and refunding, see Dan. Pr. 1109. As to the payment out of Court of an indemnity fund, before the liability is satisfied, see *Crook* v. *Hendry*, 26 W. R. 325.

(*n*) Usually a month from the issuing of the advertisement; Dan. Pr. 1094.

(*o*) The particulars are ordinarily directed to be sent to the solicitor of the executor, administrator, or other party by whom the claims are to be examined; Dan. Pr. 1094.

nature of the securities (if any) held by them; or, in default, thereof, they will be peremptorily excluded (*p*) from the benefit of the said judgment [*Or*, order].

Every creditor holding any security is to produce the same before the Master of the Rolls [*Or*, Vice-Chancellor ——], at his Chambers, situated in Rolls' Yard, Chancery Lane, Middlesex [*or as may be*], on ——, the —— day of ——, 187— (*q*), at —— of the clock in the —— noon: being the time appointed for adjudicating on the claims.

Dated [*&c.: Conclude as in* No. 974 *ante* (*r*)].

978.
Particulars of claim (*s*).

Sir:

[*Short title of matter or cause, as in the advertisement.*]

I, the undersigned [*Set out, in full, the christian and surnames, address, and description of the claimant* (*t*); *as thus:*]

Edward Williams, of Swanage, in the county of Dorset, Grocer, trading under the name or style of Thornton & Williams,

beg to inform you that I claim to be a creditor upon the estate of A. B., late of [*&c.; as in the advertisement*] for the sum of £—— [*Set out, or refer to an enclosure, containing the full particulars of the claim; as thus:*]

being money lent by me to the said A. B., on the —— day of ——, 187—,

Or, for goods sold and delivered by me to the said A. B.: the full particulars whereof are comprised in the paper writing marked L., sent herewith,

and that the only security I hold for the debt so due to me, or any part thereof, is [*State the nature of the security, if any; as thus:*]

an I. O. U. of the said A. B., for the said £——, dated ——, 187—,

Or, and that I do not hold any security whatsoever for the debt so due to me, or any part thereof.

[*Signature of creditor, and date.*]

To [*Name and address of the person to whom, by the advertisement, the notice is directed to be sent*].

(*p*) See Cons. Ord. XXXV. 12. As to the effect of this clause, see Dan. Pr. 1101, 1102.

(*q*) Usually three weeks after the expiration of the time for sending the particulars; but a prolonged time will be fixed, where necessary; Dan. Pr. 1094.

(*r*) As to the fee payable on the advertisement, see *ante* No. 956, note (*s*); and as to the insertion in the *Gazette*, and in the public papers, see *ante* No. 974, note (*g*).

(*s*) See Dan. Pr. 1094, and *ante* No. 977.

(*t*) In the case of a firm, set out the full christian and surnames of the persons constituting it, as well as the name or style in which they trade or carry on business.

979.
Notice to creditor to produce documents (*u*).

In the High Court of Justice,
Chancery Division.
[*Short title.*]

You are hereby required to produce, in support of the claim sent in by you against the estate of A. B., deceased [*Describe any probate, administration, deed, or document required to be produced; as thus:*]

the probate of the will of C. D., granted to you,

Or, letters of administration of the personal estate of C. D., granted to you (*x*),

before the Master of the Rolls [*Or*, Vice-Chancellor ——], at his Chambers, situate in the Rolls' Yard [*&c.: or as may be*], on ——, the —— day of ——, 187—, at —— of the clock in the —— noon.

Dated this —— day of ——, 187—.

G. R., of [*place of business*],
Solicitor for the plaintiff [*Or*, defendant; *or as may be*].

To [*Name of claimant*].

980.
Affidavit of investigation of the claims sent in (*y*).

In the High Court of Justice,
Chancery Division.
[*Title of the cause or matter, and reference to the record.*]

We, C. D., of [*residence and addition*], the above-named plaintiff [*Or*, defendant; *or as may be*], the executor [*Or*, administrator] of A. B., late of [*residence and addition: as in the advertisement*], deceased, and E. F., of [*place of business*], solicitor in this cause [*Or*, matter] for the said C. D. [*or as may be* (*z*)], severally make oath and say, as follows:

(*u*) See Dan. Pr. 1094; Ord. 27 May, 1865, rules 2—4, and Sched. 2, No. 2. As to the mode of giving the notice, see Ord. 27 May, 1865, rule 13; Dan. Pr. 1095, note (*m*). The creditor must, at the time appointed for adjudicating on the claims, produce the security (if any,) held by him, without other notice than the advertisement; see *ante* No. 977.

(*x*) Where the creditor claims in a representative character, notice should be given to him to produce the probate, letters of administration, or other instrument under which he claims title; Dan. Pr. 1095; and see *ante* No. 897.

(*y*) See Dan. Pr. 1095; Ord. 27 May, 1865, rule 5, and Sched 2, No. 3. The affidavit must be filed at least seven clear days prior to the time appointed for adjudication; Ord. 27 May, 1865, rule 5; unless the Judge directs the making of the affidavit to be postponed till after the day appointed for adjudication; *Ibid.*, rule 6. An office copy of the affidavit, together with the exhibited list of claims, must be produced at the time of adjudicating on the claims; Dan. Pr. 1096.

(*z*) The affidavit is to be made by the executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor, or other competent person, or otherwise as the Judge shall direct; Ord. 27 May, 1865, rule 5; Dan. Pr. 1095.

I, the said E. F., for myself, say as follows :—

1. I have in the paper writing, now produced and shown to me, and marked A. (*a*), set forth a list of all the claims, the particulars of which have been sent in to me by persons claiming to be creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf, dated the —— day of ——, 187—.

And I, the said C. D., for myself say, as follows :—

2. I have examined the particulars of the several claims mentioned in the paper writing, now produced and shown to me, and marked A. (*a*), and I have compared the same with the books, accounts, and documents of the said A. B. [*or as may be ; and state any other inquiries or investigations made*], in order to ascertain, so far as I am able, to which of such claims the estate of the said A. B. is justly liable.

3. From such examination [*and state any other reasons*], I am of opinion, and verily believe, that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked A. ; and to the best of my knowledge and belief such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants.

Or, 4. I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence.

Sworn [*&c. : see ante* No. 696 *or* 698].

981.

List of claims to be exhibited to the affidavit of investigation (*b*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

List of claims, the particulars of which have been sent in to E. F., the solicitor of the plaintiff [*Or*, defendant ; *or as may be*], by persons claiming to be creditors of A. B., deceased, pursuant to the advertisement issued in that behalf, dated the —— day of ——, 187—.

This paper writing, marked A., was produced and shown to C. D. (and E. F.), and is the same as is

(*a*) See *post* No. 981.

(*b*) See Dan. Pr. 1095 ; Ord. 27 May, 1865, rule 5, and Sched. 2, No. 4.

referred to in his [*Or*, their] affidavit, sworn before me this —— day of ——, 187—.

W. B. [*&c.: see ante* No. 723].

First Part.—Claims proper to be allowed without further evidence.

Serial No. (*c*).	Names of claimants.	Addresses and descriptions.	Particulars of claim.	Amount claimed.	Amount proper to be allowed.
				£ *s. d.*	£ *s. d.*

Second Part.—Claims which ought to be proved by the claimants.

Serial No. (*c*).	Names of claimants.	Addresses and descriptions.	Particulars of claim.	Amount claimed.
				£ *s. d.*

982. Affidavit of non-receipt of any claim under the advertisement (*d*).

In the High Court of Justice,

Chancery Division.

[*Title of the cause or matter, and reference to the record.*]

I, E. F., of [*place of business*], gentleman, the solicitor in this cause [*Or*, matter] for the above-named plaintiff [*Or*, defendant C. D.; *or as may be*], the executor [*Or*, administrator] of A. B., late of [*residence and addition: as in the advertisement*], deceased, make oath and say, as follows:

1. No claim, or particulars of any claim, has or have been sent in to me,

[*If so, add:*] or to my firm of F. & G., of ——, aforesaid [*as in the advertisement*],

(*c*) The claims should be numbered in numerical order; and great care should be taken that those in the second part are numbered *in continuation* of the numbers of those in the first part.

(*d*) See Dan. Pr. 1096, note (*q*). The affidavit must be made by the person, or by one of the firm of persons, to whom the particulars of claims are directed to be sent by the advertisement; and the description of the deponent should correspond with the description in the advertisement. An office copy of the affidavit should be produced at Chambers at the time appointed for adjudicating on the claims, or at an adjournment thereof; Dan. Pr. 1096, note (*q*).

by any person or persons claiming to be a creditor or creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf in this cause [*Or*, matter], dated the —— day of ——, 187—, and which was published in the "London Gazette" of the —— day of ——, 187—.

Sworn [*&c* : *see ante* No. 696].

983.

Notice to creditor to prove his claim (*e*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me, on or before the —— day of ——, 187—(*f*); and to attend, by your solicitor, at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], situate in the Rolls' Yard [*&c.*; *or as may be*], on ——, the —— day of ——, 187—, at —— of the clock in the ——noon (*g*): being the time appointed for adjudicating on the claim. Dated [*&c.* : *Conclude as in* No. 979 *ante*].

984.

Notice to creditor of allowance of claim (*h*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of £——, with interest thereon, at £— per cent. per annum, from the —— day of ——, 187—, and £—— for costs.

[*If part only has been allowed, add :*] If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit [*Continue as in* No. 983 *ante*, *to the end*].

985.

Affidavit to prove a debt due on a judgment (*i*).

Formal parts : see ante No. 693.

1. A. B., the testator [*Or*, intestate] in the judgment [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter]

(*e*) See Dan. Pr. 1096 : Ord. 27 May, 1865, rule 8, and Sched. 2, No. 5. As to the mode of giving the notice, see Ord. 27 May, 1865, rule 13 ; Dan. Pr. 1095, note (*m*).

(*f*) This time is not to be less than seven days after the notice ; Ord. 27 May, 1865, rule 8.

(*g*) Insert the time to which the adjudication has been adjourned ; *Ibid.*

(*h*) See Dan. Pr. 1096 ; Ord. 27 May, 1865, rule 8, and Sched 2, No. 6. As to the mode of giving the notice, see *Ibid.*, rule 13 ; Dan. Pr. 1095, note (*m*).

(*i*) See Dan. Pr. 1096. As to the computation of interest on a judgment debt, see *Ibid.*, 1104. A judgment debt is not a specialty debt within 32 & 33 Vict. c. 46 ; *Re Williams*, *Williams* v. *Williams*, L. R. 15 Eq. 270.

named, was at the time of his death, and his estate still is, justly and truly indebted to me in the two several sums of £—— and £——, and interest at the rate of £4 per cent. per annum on the said sum of £——, from the —— day of ——, 187—, and on the said sum of £——, from the —— day of ——, 187—, upon and by virtue of a judgment recovered by me against the said A. B. in the —— Division of Her Majesty's High Court of Justice, and dated the —— day of ——, 187—.

2. The paper writing, marked A., now produced and shown to me (*k*), is an office copy of the said judgment, which still remains in full force, unreversed and unsatisfied.

3. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor hath nor have any other person or persons by my order, or for my use, received any security or satisfaction whatsoever for the said sum of £——, and interest, or any part thereof respectively, save and except the said judgment [*or as may be*].

986.

Affidavit to prove a debt due on a mortgage, and covenant to pay (*o*).

Formal parts: see ante No. 693.

1. By an indenture dated the —— day of ——, 187—, now produced and shown to me, and marked A. (*k*), and made between A. B., the testator [*Or*, intestate] in the judgment [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter] named, of the one part, and myself of the other part, the said A. B. granted and conveyed a farm called Blackacre, in the parish of A., in the county of B., with the appurtenances, unto and to the use of me, my heirs and assigns: subject to a proviso for redemption thereof, in case the said A. B., his heirs, executors, or administrators, should on the —— day of ——, 187—, pay to me, my executors, administrators, or assigns, the sum of £5,000, with interest thereon in the meantime, at the rate of £5 per cent. per annum; and the said A. B., for himself, his heirs, executors, and administrators, thereby covenanted with me, to pay me the said sum of £5,000, with interest as aforesaid, according to the said proviso.

2. On the —— day of ——, 187—, the said A. B. paid to me the sum of £1,000 in part discharge of the said £5,000.

3. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £4,000, residue of the said £5,000, with interest on the said £4,000 at the

(*k*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*o*) See Dan. Pr. 1096. As to proof by a secured creditor, see Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 40; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 10.

rate aforesaid, from the —— day of ——, 187—, upon and by virtue of the said indenture.

4. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not nor hath nor have any other person or persons by my order, or for my use, received any satisfaction or security whatsoever for the said sum of £4,000, and interest, or any part thereof respectively, save and except the said mortgage charge.

5. I estimate the value of my said security at the sum of £——, and I claim to be entitled to prove against the estate of the said A. B. for the sum of £——, being the balance of the said sum of £4,000, and interest thereon, after deducting the said sum of £—— [*estimated value of security*] (*p*).

987.

Affidavit to prove a debt due on a common money bond (*q*).

Formal parts: see ante No. 693.

1. A. B., the testator [*Or*, intestate] in the judgment [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter] named, made his bond dated the —— day of ——, 187—, to me in the penal sum of £——, conditioned for the payment by him, his executors and administrators, to me of the sum of £200, on the —— day of ——, 187—, together with interest thereon, in the mean time, at the rate of £5 per cent. per annum; and which said bond is now produced and shown to me, and is marked A. (*r*).

2. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £100, with interest thereon at the rate aforesaid from the —— day of——, 187—, upon and by virtue of the said bond.

3. And I, speaking positively [*Continue as in paragraph* 4 *of* No. 986 *ante, to the end; varying the statement, where necessary*].

988.

Affidavit to prove arrears due on bond to secure an annuity (*s*).

[*Proceed as in* No. 987 *ante, to* conditioned; *and continue thus:*]

for the payment by him, his executors or administrators, of the sum of £20 a year to me, during the life of E. F.: who is still living

(*p*) Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 40; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 10.

(*q*) See Dan. Pr. 1096. As to the computation of interest on a bond debt, see Dan. Pr. 1103.

(*r*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*s*) See No. 987 *ante*, and note (*q*).

[*or as may be*]; and which said bond is now produced and shown to me, and is marked A. (*t*).

2. The said A. B. was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £40, for arrears of the said annuity computed to the —— day of ——, 187—, upon and by virtue of the said bond.

3. And I, speaking positively [*Continue as in paragraph* 4 *of* No. 986 *ante, to the end: varying the statement, where necessary*].

989.
Affidavit to prove a debt due on a bill of exchange (*u*).

Formal parts: see ante No. 693.

I, A. B., the testator [*Or*, intestate] in the judgment [*Or*, order] dated the —— day of ——, 187—, in this cause [*Or*, matter] named, was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £80, for principal money due on a bill of exchange dated the ——, 187—, drawn by me upon, and accepted by the said A. B., for the payment of £80 to me, —— months after the date thereof;

Or, due on a bill of exchange dated, *&c.*, drawn by one C. D. upon and accepted by the said A. B., for the payment of £80 to me —— months after the date thereof;

Or, due to me as indorsee of a bill of exchange dated, *&c.*, drawn by C. D. upon and accepted by the said A. B. for the payment of £80 to the order of the said C. D., —— months after the date thereof, and by him indorsed to me [*or as may be*];

together with interest on the said principal sum, at the rate of £5 per cent. per annum, from the —— day of ——, 187—; and which said bill of exchange is now produced and shown to me, and is marked A. (*t*).

2. And I, speaking positively [*Continue as in paragraph* 4 *of* No. 986 *ante, to the end: varying the statement, where necessary*].

990.
The like, on a promissory note (*y*).

[*Proceed as in* No. 989 *ante, to* principal money; *and continue thus:*]

due on a promissory note dated the ——, 187—, for £80, made by the said A. B., whereby he promised to pay to me or my order the sum of £80, one month after the date thereof;

(*t*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*u*) See Dan. Pr. 1096. As to the interest allowed in equity on a debt due on a bill of exchange, see Dan. Pr. 1106.

(*y*) See Dan. Pr. 1096, 1106.

Or, due on a promissory note dated, *&c.*, for £80, made by the said A. B., and payable to me on demand ;

Or, due to me as indorsee of a promissory note dated, *&c.*, made by the said A. B., for the payment of £80 to the order of E. F., —— months after the date thereof, and by the said E. F. indorsed to me [*or as may be*] ;

together with interest [*Continue as in* No. 989 *ante, to the end: substituting* promissory note *for* bill of exchange].

991.

Affidavit to prove a debt due on a cheque (*z*).

[*Proceed as in* No. 989 *ante, to* principal money ; *and continue thus :*]

due to me as the payee of a banker's check, dated the ——, 187—, drawn by the said A. B. on Messrs. C. D. & Co., for the payment of £80 to me or bearer, on demand ;

Or, due to me as the bearer of a banker's check, dated, *&c.*, drawn by the said A. B. on Messrs. C. D. & Co., for the payment of £80 to E. F. or bearer, on demand, and by the said E. F. transferred and delivered to me ;

and which said check has been duly presented to, and refused payment by, the said Messrs. C. D. & Co. ; and is now produced and shown to me, and marked A. (*a*).

2. And I, speaking positively [*Continue as in paragraph* 4 *of* No. 986 *ante, to the end: varying the statement, where necessary*].

992.

The like, on a simple contract (*b*).

Formal parts: see ante No. 693.

1. A. B., the testator [*Or*, intestate] in the judgment [*Or*, order], dated the —— day of ——, 187—, in this cause [*Or*, matter] named, was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of £150 for [*State what ; as in the following examples*] :

money lent by me to the said A. B.

money paid by me for the use of the said A. B. at his request.

money received by the said A. B. for my use.

money found to be due from the said A. B. to me, on an account stated between us.

goods sold and delivered by me to the said A. B.

(*z*) See Dan. Pr. 1096.

(*a*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*b*) See Dan. Pr. 1096.

work done, and materials for the same provided, by me for the said A. B., at his request.

salary due and payable from the said A. B. to me, for my services done for the said A. B. as his clerk, and on his retainer.

work done by me as the agent of and for the said A. B., and on his retainer, and for commission and reward due and of right payable from him to me in respect thereof.

work done as a solicitor, and materials for the same provided by me for the said A. B., upon his retainer, and for fees due and payable to me in respect thereof, and for money paid by me for the use of the said A. B., at his request.

[*If so:*] and in the further sum of £5 for interest upon, and for the forbearance at interest to the said A. B. by me, at his request, for divers spaces of time, of moneys due and owing to me from the said A. B.; and which interest the said A. B. contracted and agreed with me to pay me (*d*).

2. The full particulars of my aforesaid demand are set forth in the paper writing now produced and shown to me, and marked A. (*e*).

[*Where applicable, add:*] The prices charged in the said paper writing marked A. are fair and reasonable, and such as are usual and customary in the trade or business [*Or*, profession] of a timber merchant [*or as may be*]: as I know from having carried on such trade, *&c.*, for —— years last past.

3. And I, speaking positively [*Continue as in paragraph* 4 *of* No. 986 *ante, to the end: varying the statement where necessary*].

993.

Affidavit by a personal representative, to prove a debt due to the estate (*f*).

In the High Court of Justice,
Chancery Division.
[*Title of cause or matter, and reference to the record.*]

I, C. D., of [*residence and addition*], the executor of the will [*Or*, administrator of the personal estate] of E. F., late of [*residence and addition*]: who died on the —— day ——, 187—: acting under probate of such will [*Or*, letters of administration of such estate] granted to me by the Principal Registry [*or as may be*] of the Probate Division of Her Majesty's High Court of Justice on the —— day of ——, 187—, make oath and say, as follows:

(*d*) As to the interest allowed in equity on stated accounts, see Dan. Pr. 1106.

(*e*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

(*f*) See Dan. Pr. 1096.

1. [*State, in numbered paragraphs, the nature and existence of the debt: as in* Nos. 985 *to* 992 *ante; and conclude as follows:*]

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that the said E. F. did not in his lifetime, and I have not, nor have nor hath any other persons or person by the order of the said E. F., or of myself, or for his or my use, received any security or satisfaction whatsoever for the said sum of £—— [*or as may be; see pars.* 4, 5 *of* No. 986 *ante*].

Sworn [*&c.: see ante* No. 696].

994.

Summons for leave to make a claim, where the time allowed has expired, but certificate not made (*g*).

Formal parts: see ante No. 881.

on the part of A. B., of [*residence and addition*], that, notwithstanding the time limited for making claims has expired, he may be at liberty, under the judgment [*Or,* order] dated the —— day of ——, 187—, in this cause [*Or,* matter], to make and establish his claim [*State in respect of what; as thus:*]

as a creditor upon the estate of C. D., the testator [*Or,* intestate] in the said judgment [*Or,* order] named, for the sum of £——.

995.

Petition to be admitted as a creditor, after direction to apportion fund amongst certified creditors but before apportionment made (*h*).

Formal parts: see post No. 1578.

The humble petition of A. B., of [*residence and addition*].

Showeth as follows:

[*Show the nature of the cause and the proceedings had therein; as thus:*] 1. This action was instituted for the administration of the estate of C. D.; and by the judgment made therein, dated the —— day of ——, 187—, the usual accounts and inquiries were directed to be taken and made, including an account of the debts of the said C. D.

2. The Chief Clerk of his lordship the Master of the Rolls [*Or,* the Vice-Chancellor ——] made his certificate, dated the —— day of ——, 187—, in pursuance of the said judgment, and thereby certified the result of the said account of debts, and of the other accounts and inquiries directed by the said judgment.

3. The said Chief Clerk's certificate having become binding on the —— day of ——, 187—, this action came on to be heard on further consideration on the —— day of ——, 187—; and by an order then made of that date, the costs of this action were directed

(*g*) See Dan. Pr. 1096; Cons. Ord. XXXV. 43; Ord. 27 May, 1865, rule 10.

(*h*) See Dan. Pr. 1097. As to service of the petition, see *Ibid.*

to be taxed, and to be paid out of the sum of £1,000 cash in Court to the credit of this action ; and the residue of such cash was thereby directed to be apportioned amongst the creditors of the said C. D., in proportion to the respective amounts certified to be due to them by the said Chief Clerk's certificate.

4. Pursuant to the said order, the costs thereby directed to be taxed, have been carried into the office of the Taxing Master ; but the taxation thereof is not yet completed ; and no apportionment of the residue of the said fund has yet been made.

[*Show nature of petitioner's claim ; and why omitted to be made before ; as thus :*] 5. The said C. D. was, at the time of his death, and his estate still is, justly and truly indebted to your petitioner in the sum of £80, for goods sold and delivered by your petitioner to the said C. D., in the course of your petitioner's trade as a wine merchant. Your petitioner on the —— day of ——, 187—, for the first time became aware of the death of the said C. D., and that his estate was under administration by this honourable Court. By reason of your petitioner's ignorance of the existence of this suit, no claim by or on the part of your petitioner in respect of his said debt was made under the said judgment ; and your petitioner's said debt is not included in the said Chief Clerk's certificate.

6. Your petitioner is now desirous to establish his said debt against the assets of the said C. D. in this action.

Your petitioner therefore humbly prays, that he may be allowed to rank as a creditor upon the estate of the said C. D. for the said sum of £80, and for interest thereon at the rate of £4 per cent. per annum from the date of the said judgment ; and that, notwithstanding the said order on further consideration, the residue which will remain of the said £1,000, after payment of the said costs, may be directed to be apportioned amongst your petitioner in respect of his said debt and interest, and the several creditors of the said C. D. certified by the said Chief Clerk's certificate, in proportion to the respective amounts so due to your petitioner, and the said other creditors ; and that the apportioned sums may be directed to be paid to your petitioner and the said other creditors accordingly.

Or that [*Continue as in prayer of* No. 1578 *post, to the end ; and add foot note : see post* No. 1579].

996.

Summons to be admitted as a creditor, after direction to apportion fund amongst certified creditors, but before apportionment made (*i*).

Formal parts: see ante No. 881.

on the part of A. B., of [*residence and addition*]:

1. That he may be allowed to rank as a creditor upon the estate of C. D., the testator [*Or*, intestate] in the judgment in this cause dated the —— day of ——, 187—, named, for the sum of £80, and for interest thereon at the rate of £4 per cent. per annum from the date of the said judgment.

2. That, notwithstanding the order on further consideration, dated the —— day of ——, 187—, the residue which will remain of the sum of £1,000 therein mentioned, after payment of the costs thereby directed to be taxed, may be directed to be apportioned amongst the applicant, in respect of his said debt and interest, and the several other creditors of the said C. D. whose debts are certified by the Chief Clerk's certificate dated the —— day of ——, 187—, in proportion to the respective amounts due to the applicant, and the said other creditors.

3. That the apportioned sums may be directed to be paid to the applicant, and the said other creditors accordingly.

997.

Summons for payment by claimant of costs of his unsuccessful claim (*k*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be: see ante* No. 968], that the costs occasioned to the applicant, and the other parties to this cause [*or as may be*], by reason of the claim made by E. F., of [*residence and addition*], to rank as a creditor upon the estate of the testator G. H. [*or as may be*], under the judgment [*Or*, order] dated the —— day of ——, 187—, but which claim has been disallowed, may be ascertained at Chambers, or taxed by the Taxing Master; and that the said E. F. may be ordered to pay such costs to the applicant and the other parties entitled thereto [*or as may be*].

(*i*) See Dan. Pr. 1097.

(*k*) See Dan. Pr. 1108. As to the mode of enforcing the order, see *post* note (*a*) at p. 687.

998.
List of debts allowed (*l*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Short title of cause or matter, and reference to the record.*]

List of debts allowed.

Serial No. of claim.	Names of creditors.	Addresses.	Amounts allowed for principal, interest, and costs.			Total amounts due.		
			£	*s.*	*d.*	£	*s.*	*d.*
2	James Allen .	Boston, in the county of Lincoln, Surgeon	100	0	0			
		Interest . .	4	0	0			
		Costs . . .	2	2	0			
						106	2	0
1	Charles Cohen	98, Piccadilly, in the county of Middlesex, Gentleman, Executor of John Thomas . . .	67	0	0			
		Interest from 5th October, 18—, at £5 per cent. .	4	2	0			
		Costs . . .	2	2	0			
						73	4	0
5	John Dennis, and Owen Thomas .	16, Fleet Street, London, Grocers and copartners . .	100	0	0			
		Interest from 16th October, 18—, at £5 per cent. .	5	0	0			
		Another debt . .	62	0	0			
		Interest . .	2	10	0			
		Costs . . .	2	4	6			
						171	14	6
			Total		£	351	0	6

(*l*) See Dan. Pr. 1100 ; Cons. Ord. XXXV. 44 ; Regul. 8 Aug. 1857, Sched. No. 9. As to lists of claims of creditors under Ord. 27 May, 1865, see *ante* No. 981. The list must be written on foolscap paper, bookwise ; Regul. 8 Aug. 1857, rule 17 ; and, in preparing it, the following directions must be attended to :—The names of the creditors are to be inserted in alphabetical order. When the debt does not carry interest, but interest is allowed under Cons. Ord. XLII. 9, it is to be stated as in the first example in the list If the debt carries interest, the rate and time from which it is computed should be stated, as in the second example. As in all cases the interest is computed to the date of the certificate, this need not be stated.

999. Affidavit by a beneficiary as to incumbrances by him (*n*).

(9.) *Inquiries as to Legacies and Annuities* (*m*).

In the High Court of Justice,
Chancery Division.

[*Title of cause or matter, and reference to the record.*]

I, John Jones, of [*residence and addition; and identify the deponent with the cause or matter; as thus:*] one of the defendants above-named,

Or, one of the children of Ephraim Jones, the testator in the judgment in this cause [*Or*, matter] dated the —— day of ——, 187—, named [*or as may be*],

make oath and say as follows:

1. I have not at any time mortgaged, charged, or otherwise incumbered the legacy of £1,000 bequeathed to me by the will of the said testator Ephraim Jones, or any part thereof [*or as may be; according to the inquiry directed*], to, or in favour of, any person or persons whomsoever.

[*If so:*] save and except as hereinafter mentioned, that is to say: By an indenture dated the —— day of ——, 187—, and made between myself of the one part, and Charles Davies, of, *&c.*, of the other part, I assigned the said legacy, and the interest due, and to accrue due in respect thereof, unto the said Charles Davies, to secure to him the repayment of £100, with interest thereon at the rate of £5 per cent. per annum; and which sum, with interest thereon at the rate aforesaid from the —— day of ——, 187—, remains due to the said Charles Davies upon the security of the said indenture [*or as may be*].

Sworn [*&c.: see ante* No. 696].

1000. Affidavit by an executor or a trustee as to notices received of incumbrances (*n*).

In the High Court of Justice,
Chancery Division.

[*Title of cause or matter, and reference to the record.*]

I, A. B., of [*residence and addition*], the above-named defendant, and the executor of the will of Ephraim Jones, the testator in the judgment [*Or*, order] in this cause [*Or*, matter] dated the —— day of ——, 187—, named [*or as may be*], make oath and say as follows:

1. I have not at any time received notice of any mortgage, charge, or incumbrance created by any person or persons interested under the will of the said Ephraim Jones, of the legacies, shares, or interests, thereby bequeathed to them respectively, or any part or parts thereof [*or as may be; according to the inquiry directed*].

[*If so:*] save and except the —— notices now produced and

(*m*) See Dan. Pr. 1109—1111. As to the prosecution of inquires in a district registry, where so ordered by the Court or a Judge, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66; *supra*, note (*a*) at p. 468. For form of advertisement for legatees and incumbrancers to come in under a judgment or order, see *ante* No. 974. As to the computation of interest on legacies, see Cons. Ord. XLII. 11; Dan. Pr. 1110. As to the computation of arrears of annuities, see *Ibid.*

(*n*) See Dan. Pr. 1110.

shown to me, and marked respectively A., B., *&c.* (*o*); and which notices were received by me on the respective days set forth in the first column of the schedule hereto; and the short particulars thereof are set forth in the second column of such schedule, opposite the respective days on which such notices respectively were so received.

The Schedule above referred to.

Date when notice received (*p*).	Short particulars.
1st January, 187— . .	A notice, dated ——, 187—, from Messrs. A. & B., of an assignment by John Jones of his legacy of £1000 to Charles Davies, to secure £100 and interest.
8th August, 187— . .	A notice, &c., &c.

Sworn [*&c.: see ante* No. 696].

1001. List of legacies remaining unpaid (*q*).

In the High Court of Justice,
Chancery Division.
[*Short title of cause or matter, and reference to the record.*]

List of Legacies remaining unpaid.

Serial No.	Names of legatees.	Descriptions.	Amounts of principal and interest.	Total amounts due.
			£ *s.* *d.*	£ *s.* *d.*
1	James Oliver	Son of testator, an infant . . .	100 0 0	
		Interest . .	7 5 6	
				107 5 6
2	Mary Russell	of 20, Cheapside, London, widow . .	50 0 0	
		Interest from 1st January, 1869, the death of testator . .	4 8 4	
				54 8 4
3	Jane, the wife of John Williams .	of Lincoln, Esq. . .	250 0 0	
		Paid in part .	50 0 0	
			200 0 0	
		Interest. .	14 11 0	
				214 11 0
			Total £	376 4 10

(*o*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.
(*p*) The dates in this column should be placed in chronological order.
(*q*) See Dan. Pr. 1110. For this form, see Regul. 8 Aug. 1857, Sched. No.

1002.
List of annuities and arrears due (*r*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]
List of Annuities, and arrears due.

Serial No.	Names of annuitants.	Description of annuitants, and nature of annuities.	Amounts of annuities.	Amounts of arrears due.
			£ *s.* *d.*	£ *s.* *d.*
1	Mary Jones .	Spinster, daughter of testator, during her life . . .	50 0 0	25 0 0
2	Maria Williams	Widow of testator, during her life and widowhood . . .	200 0 0	
		Arrears due from 7th of August, 1869, down to which the annuity has been paid. . .	. . .	300 0 0
		Totals . £	250 0 0	325 0 0

(10.) *Suits for Specific Performance* (*s*).

1003.
Notice of motion for an inquiry as to the title (*t*).

Formal parts: see post No. 1571.
on the part of the plaintiff, that an inquiry may be directed whether a good title can be made to the hereditaments comprised in the

10. The list must be written on foolscap paper, bookwise; *Ibid.*, rule 17; and in preparing it the following directions should be observed:—Where the interest is to be computed from the end of one year after testator's death, it is to be stated as in the first example above; if otherwise, the time from which it is payable is to be stated; and as in all cases interest is computed to the date of the certificate, this need not be stated; *Ibid.*, Sched. No. 10, note. As to the apportionment of a deficient fund among legatees, see *post* Nos. 1085—1087.

(*r*) See Dan. Pr. 1110. For this form, see Regul. 8 Aug. 1857, Sched. No. 11. The list must be written on foolscap paper, bookwise; *Ibid.*, rule 17; and, in preparing it, the arrears should be explained as in the second example, if due from any other period than that of testator's death; *Ibid.*, Sched. No. 11, note.

(*s*) As to suits for specific performance, and the practice relative thereto, see Dan. Pr. 1111—1117. For forms of judgments and orders in such suits, see Seton, ed. 3, 593—595, 607—612.

(*t*) See Dan. Pr. 1112; Cons. Ord. XX.; Seton, ed. 3, 593, 1.

agreement dated the —— day of ——, 187—, in the plaintiff's bill mentioned [*or as may be*]; and if a good title can be made, then a further inquiry when it was first shown (*u*) that a good title could be made.

1004. Statement of the points in dispute, for chambers (*v*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]
Statement of the points in dispute between the plaintiff and defendant, as to the title to the hereditaments comprised in the agreement dated ——, 187—, in the statement of claim mentioned [*or as may be*], and by the judgment [*Or*, order] dated ——, 187—, directed to be inquired into.

A. Plaintiff's (*x*) requisitions, dated ——, 187—.	B. Defendant's (*x*) answers, dated ——, 187—.	C. Plaintiff's (*x*). replies, dated ——, 187—.
1.	1.	1.
2.	2.	2.
3.	3.	3.

1005. Memorandum of direction to the conveyancing counsel, to advise as to the title (*y*).

The Master of the Rolls [*Or*, Vice-Chancellor ——]
at Chambers.
[*Short title of the action or matter, and reference to the record.*]
The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed that the opinion of the conveyancing counsel in rotation

(*u*) See Dan. Pr. 1115.

(*v*) See Dan. Pr. 1112. Statements of this description can ordinarily be copied most conveniently for use on brief paper briefwise.

(*x*) Or as the fact may be.

(*y*) See Dan. Pr. 1113. As to when the Court may require the assistance of one of the conveyancing counsel, and as to the mode of objecting to his opinion, see *Ibid.*, 1046; 15 & 16 Vict. c. 80, s. 40. For the manner in which the business is distributed among such counsel, and as to their fees,

[*or as may be* (*z*)] be procured as to [*State the matter referred; as thus:*]

whether a good title is deduced by the accompanying abstract, identified by my initials thereon, to the hereditaments in the order dated the —— day of ——, 187—, mentioned.

Dated this —— day of ——, 187—.

R. M., Chief Clerk.

1006.

Note thereon of name of the conveyancing counsel in rotation (*a*).

Mr. D. is the conveyancing counsel in rotation.

[*Signature of the Registrar's clerk.*]

1007.

Chief Clerk's certificate of the result of an inquiry as to the title (*c*).

Formal parts: see post No. 1238.

1. [*Where a good title is shown:*]

A good title can be made to the hereditaments comprised in the agreement dated the —— day of ——, 187—, in the statement of claim mentioned [*If subject to any act being done, or other qualification, state same*].

It was first shown on the —— day of ——, 187—, that such good title could be made [*or as may be, according to the form of the inquiry directed*].

The evidence produced, *&c.*

2. [*Where a good title is not shown:*]

A good title cannot be made [*&c.: as above, to* mentioned; *and state the points on which the title is defective*].

The evidence produced, *&c.*

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see 15 & 16 Vict. c. 80, ss. 40, 41, 43; Cons. Ord. II.; Dan. Pr. 1046, 1047; and as to the costs of settling drafts by private counsel in addition, see Cons. Ord. XL. 30.

(*z*) Where the reference is made to any one in particular of the conveyancing counsel, under Cons. Ord. II. 5 (Dan. Pr. 1047), say; "the opinion of Mr. A., the conveyancing counsel in this cause [*Or,* matter]"—Or, "the opinion of Mr. A., one of the conveyancing counsel."

(*a*) See Dan. Pr. 1047; Cons. Ord. II. 1, 3. Where the reference is made to any one of the counsel by name, this note is of course not required.

(*c*) See Dan. Pr. 1113. As to the form of the certificate, see *Ibid.*; and for the grounds on which the certificate will be reviewed, *Ibid.*, 1113, 1114.

1008.
Further certificate of amount due to vendor, and of settlement of draft conveyance (*d*).

Formal parts: see post No. 1238.

Interest at the rate of £— per cent. per annum, from the —— day of ——, to the date of this certificate on the sum of £3,000, the purchase-money for the hereditaments comprised in the agreement dated, *&c.*, in the statement of claim mentioned, amounts to the sum of £280.

The plaintiff has received rents and profits of the said hereditaments since the —— day of ——, to the amount of £300; and he has paid, or is entitled to be allowed, on account thereof, sums to the amount of £50: leaving a balance due from him of £250 on that account.

The particulars of the above receipts and payments appear in the account marked A., verified by the affidavit of the plaintiff, filed ——, 187—, and which account is to be filed with this certificate.

The plaintiff's costs of this action have been taxed by the Taxing Master at the sum of £200 (*e*).

The said sums of £3,000, £280, and £200 make together £3,480: wherefrom being deducted the said sum of £250, there remains due to the plaintiff the sum of £3,230.

A proper conveyance of the said hereditaments from the plaintiff to the defendant has been settled (*f*): consisting of an indenture intended to be made between the plaintiff of the one part, and the defendant of the other part; and the engrossment whereof is identified by my signature in the margin thereof.

The evidence produced, *&c.*

1009.
Notice of motion or summons to fix a time for payment of amount due to the vendor (*g*).

Formal parts: *see post* No. 1571, *or ante* No. 881.

on the part of the plaintiff:

1. That the defendant A. B. may be ordered, on the —— day of ——, 187—, between the hours of twelve and one of the clock in the afternoon, to pay to the plaintiff, C. D., at the chapel of the

(*d*) See Dan. Pr. 1115. For the form of a judgment for specific performance, to which the above certificate would be applicable, see Seton, ed. 3, 607. As to the further hearing of the cause, after a certificate on the title, see Dan. Pr. 1115.

(*e*) As to including the costs in the account, see Dan. Pr. 1115.

(*f*) As to the settlement of the conveyance, see *Ibid.*

(*g*) See Dan. Pr. 1116. As to when this further order will be necessary, see *Ibid.* As to the form of the order, in a suit by the purchaser against the vendor, see *Ibid.*, 1117. For form of power of attorney to attend and receive the money, see *post* No. 1052. For forms of affidavit of attendance and non-payment, see *post* Nos. 1054, 1055. For the mode of enforcing the order, see *post* note (*a*) at p. 687. As to rescinding the contract, and staying further proceedings, after default by the purchaser, see Dan. Pr. 1116.

Rolls, in the Rolls' Yard, Chancery Lane, London [*or as may be*], the sum of £3,230, by the Chief Clerk's certificate, dated the —— day of ——, 187—, certified to be due to the plaintiff for principal, interest, and costs as therein mentioned, together with interest at the rate of £— per cent. per annum on £3,000, part thereof, from the last mentioned day to the day of payment; and also the plaintiff's costs of, and occasioned by, this application: such costs to be taxed by the Taxing Master, in case the parties differ.

2. That upon such payment being made, the plaintiff may execute and deliver to the defendant the indenture of conveyance from the plaintiff to the defendant in the said Chief Clerk's certificate mentioned; and deliver to the defendant, upon oath, all deeds and writings in his custody or power relating to the hereditaments in the said Chief Clerk's certificate also mentioned [*or as may be*].

(11.) *Investments in the Purchase, or on Mortgage, of an Estate* (*h*).

1010. Petition for the investment of a fund in Court, in a purchase, or on mortgage (*i*).

Formal parts: see post No. 1578.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

[*Show that the fund in Court is available for investment; as thus:*]

1. A. B., the testator in the pleadings in this action named, by his will, dated the —— day of ——, 187—, bequeathed to the defendants C. D. and E. F. the residue of his personal estate upon trust to convert the same into money, and to invest such money in their names in the purchase of freehold hereditaments, or on real securities in England or Wales; and to permit your petitioner to receive the rents and profits or other income of such investment, during his life; with remainders over.

2. The testator died on the —— day of ——, 187—, without having revoked or altered his said will; and probate of such will was on the —— day of ——, 187—, granted by the Principal Registry [*or as may be*] of the Probate Division of Her Majesty's High Court of Justice to the defendants C. D. and E. F., the executors therein named.

3. This action was instituted for the administration of the estate

(*h*) See Dan. Pr. 1117—1120.

(*i*) See Dan. Pr. 1118. The petition must be supported by the affidavits of surveyors or other qualified persons, stating the size, value, rental, and outgoings of the estate, and any circumstances rendering the proposed purchase or security desirable. The contract must also be produced at the time of making the application. For form of affidavit, see *post* No. 1012. For form of order in like case, see Seton, ed. 4, 486, No. 2.

of the said A. B.; and by the judgment made therein, dated the —— day of ——, 187—, the trusts of the said will were directed to be performed, and carried into execution; and the usual accounts and inquiries as to the estate of the testator were directed to be taken and made; and the clear residue of his personal estate was directed to be ascertained and certified.

4. Pursuant to the said judgment, the Chief Clerk made his certificate dated the —— day of ——, 187—, and thereby certified that there was no debt of the said testator remaining unpaid; and that the clear residue of his personal estate consisted, amongst other things, of the sum of £10,000 consolidated £3 per cent. annuities in Court to the credit of this cause, "The personal estate account."

5. By an order dated the —— day of ——, 187—, made on the hearing of this action on further consideration, the dividends on the said annuities were directed to be paid to your petitioner during his life, or until further order.

[*Show the investment proposed to be made; as thus:*]

6. Your petitioner, on behalf of the parties interested under the testator's will in his residuary personal estate, lately entered into an agreement (conditional on the approval thereof by this honourable Court) with G. H., of, *&c.*, dated the —— day of ——, 187—, for the purchase from the said G. H., at the sum of £6,000 [*Or*, for a loan to the said G. H. of the sum of £6,000, on the security of a mortgage, bearing interest at £— per cent. per annum], of certain freehold hereditaments belonging to the said G. H., situate at, *&c.*, and comprising about —— acres: to which agreement your petitioner craves leave to refer.

7. The said proposed purchase [*Or*, loan] is a fit and proper investment of the sum of £6,000 in accordance with the trusts of the testator's will; and your petitioner is desirous that the same should be approved by this honourable Court; and that the said £6,000 should be raised out of the said £10,000 consolidated £3 per cent. annuities.

Your petitioner therefore humbly prays:

1. That the said agreement may be carried into effect.
2. That the usual inquiry may be directed, as to the title to the said hereditaments (*k*).
3. That in case such title shall be approved, a proper conveyance [*Or*, mortgage] of the said hereditaments may be directed to be settled.
4. That upon the due execution thereof by all proper parties, the said £6,000 may be raised by the sale of a competent portion of the said £10,000

(*k*) Where it is shown at the hearing of the petition that the title is good, the Court sometimes will approve of it by the order sanctioning the investment; see Dan. Pr. 1117, note (*s*). For form of order in such case, see Seton, ed. 3, 491, No. 2.

consolidated £3 per cent. annuities, and paid to such person or persons as shall be certified to be entitled to receive the same.

5. That the costs of your petitioner, and all other proper parties, of this application, and consequent thereon, including the investigation of the title to the said hereditaments (except such costs as shall be properly payable by the said G. H.) may be taxed, and be raised and paid out of the said annuities.

6. That the rents and profits of the hereditaments so to be purchased [*Or*, the interest to accrue on the said investment on mortgage], and also the dividends to accrue on the residue of the said annuities during the life of your petitioner, may be directed to be paid to him until further order.

Or that [*Continue as in prayer of* No. 1578 *post, to the end; and add foot note: see post* No. 1579].

1011.

Summons, to approve of the investment by trustees of a fund in their names, in a purchase or on mortgage (*l*).

Formal parts: see ante No. 881.

on the part of the defendants C. D. and E. F. [*or as may be*]:

1. That the conditional agreement dated the —— day of ——, 187—, entered into by the applicants with G. H., of, &c., for the purchase from him at the sum of £6,000 [*Or*, for a loan to him of the sum of £6,000 on the security of a mortgage, bearing interest at £— per cent.], of certain hereditaments belonging to him, situate at, &c., may be approved on behalf of the parties interested under the will of A. B., the testator in the pleadings in this action named, in his residuary personal estate; and be carried into effect.

2. That the usual inquiry may be directed as to the title to the said hereditaments.

3. That in case such title shall be approved, a proper conveyance [*Or*, mortgage] of the said hereditaments to the applicants, the trustees of the said will, may be settled.

4. That upon the due execution thereof by such parties as shall be certified to be proper, the applicants may be at liberty to raise the said £6,000 out of a fund of £10,000 consolidated £3 per cent. annuities standing in their names, and forming part of the testator's residuary personal estate held by them upon the trusts of the testator's will; and to pay the said £6,000 to such person or persons as shall be certified to be entitled to receive the same.

5. That the costs of the applicants, and all other proper parties, of this application, and consequent thereon, including the investi-

(*l*) See Dan. Pr. 1118.

gation of the title to the said hereditaments (except such costs as shall be properly payable by the said G. H.), may be taxed; and that the applicants may be at liberty to raise such costs out of the said annuities, and retain their own costs, and pay the other costs to the parties entitled thereto.

1012. Affidavit of a surveyor in support of the petition or summons (*m*).

In the High Court of Justice,
Chancery Division.
[*Title of the cause or matter, and reference to the record.*]

I., J. W., of [*residence*], land surveyor [*or as may be*], make oath and say as follows:

1. I have carried on the business of a land surveyor at —— aforesaid for —— years and upwards last past; and have had, during that period, considerable experience in such business; and I believe myself well qualified to judge of the value of the estate hereinafter mentioned, and of like property in the vicinity thereof.

2. In pursuance of instructions received by me from Messrs. X. & Y., the solicitors in this action for the plaintiff [*or as may be*], I, on the —— day of ——, 187—, on behalf of the said plaintiff [*or as may be*], made a careful survey of the estate mentioned and described in the paper writing marked A., now produced and shown to me (*n*), and purporting to be [*State what; as thus:*] the particulars of the Blackacre estate, belonging to G. H., situate at, *&c.*, and delineated on the plan, marked B., thereunto annexed, and now also produced and shown to me (*n*).

3. I believe that the acreage and other particulars of the estate so surveyed by me are correctly set forth in the said paper writing marked A., and that the abuttals, boundaries, and subdivisions thereof are correctly delineated on the said plan marked B.

4. I have also, in pursuance of the said instructions, made a careful estimate and valuation of the estate so surveyed by me; and in so doing I have taken into consideration the tenure and situation of the said estate, the nature and quality of the land, and what would be a fair price for a purchaser to pay for the said estate as an investment, and in expectation of being able to obtain a similar or better price for the same upon a re-sale.

5. To the best of my judgment and belief, founded on the survey, estimate, and valuation aforesaid, the said estate is fully and fairly worth, as a present investment, the sum of £ ——.

6. [*Add the special circumstances, if any, which render the proposed purchase or security desirable.*]

Sworn [*&c.: see ante* No. 696].

(*m*) See Dan. Pr. 1118.

(*n*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

1013.

Affidavit of examination of the abstract of title, by the solicitor (*o*).

In the High Court of Justice,

Chancery Division.

[*Title of the cause or matter, and reference to the record.*]

I, A. B., of [*place of business*], gentleman, the solicitor for the plaintiff [*or as may be*] in this action [*Or*, matter], make oath and say, as follows:

1. I have carefully examined and compared the abstract, written on —— sheets of paper, now produced and shown to me, and marked A. (*p*).

Or, each of the —— abstracts now respectively produced and shown to me, and marked respectively A., B., &c. (*p*): the said abstract marked A. being written on —— sheets of paper, the said abstract marked B. being written on —— sheets of paper, *&c.*, *&c.*

with the several deeds and documents thereby purported to be abstracted.

[*If not with all, qualify the affidavit accordingly; as thus:*] except the indenture dated the 9th June, 1860, abstracted at page 11 of the said abstract (marked A.).

2. The said abstract is a true and correct abstract [*Or*, The said abstracts are true and correct abstracts] of the said deeds and documents, so far as such deeds and documents relate to the hereditaments referred to in an order made in this action [*Or*, matter] dated the —— day of ——, 187—.

Sworn [*&c.: see ante* No. 696.]

1014.

The like, by another person (*q*).

In the High Court of Justice,

Chancery Division.

[*Title of the cause or matter, and reference to the record.*]

We, A. B., of [*place of business*], gentleman, the solicitor for the plaintiff [*or as may be*] in this action [*Or*, matter], and C. D., of the same place, clerk to the said A. B. [*or as may be*], severally make oath and say:

First, I, the said A. B., for myself say, as follows:

1. [*Show competency of C. D. to examine the abstract; as thus:*] The said C. D. has, for —— years last past, been my managing clerk; and he has had considerable experience in the examination of abstracts of title, and other conveyancing business. In my judgment and belief he was and is fully competent to examine the abstract [*Or*, abstracts] of title mentioned in the subsequent

(*o*) See Dan. Pr. 1118; Regul. 8 Aug. 1857, Sched. No. 18.

(*p*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

(*q*) See Dan. Pr. 1118.

parts of this affidavit, with the deeds and documents thereby abstracted.

And I the said C. D. for myself say, as follows:

2. I have carefully [*Continue as in* No. 1013 *ante, to the end.*]

Sworn [*&c.: see ante* No. 696 or 698].

1015. Memorandum of direction to the conveyancing counsel, to advise on title, and settle draft of conveyance or mortgage (*r*).

Formal parts: see ante No. 1005.

The Master of the Rolls [*Or,* Vice-Chancellor ——] has directed that the opinion of the conveyancing counsel in rotation [*or as may be* (*s*)] be procured upon the title to the hereditaments by the order of the —— day of ——, 187—, in this action [*Or,* matter] directed to be inquired into; and, in case such counsel shall be of opinion that a good title is shown, that the draft of the conveyance [*Or,* mortgage] by the said order directed to be settled, be perused and settled by such counsel.

1016. Certificate verifying copy draft of conveyance or mortgage as settled by the conveyancing counsel (*t*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

We [*Or,* I] certify the above to be a true copy of the draft conveyance [*Or,* mortgage; *or as may be*], as settled by Mr. D., the conveyancing counsel in this action [*Or,* matter], pursuant to the judgment [*Or,* order] dated the ——, 187—.

A. & B., solicitors for the plaintiff [*or as may be*].

——, 187—.

1017. Affidavit of examination of the engrossment of the deed (*u*).

Formal parts: see ante No. 693.

1. I have carefully examined and compared the parchment writing now produced and shown to me, and marked A. (*x*),

(*r*) See Dan. Pr. 1119. As to obtaining the assistance of the conveyancing counsel, see *Ibid.*, 1118, and *ante* No. 1005, note (*y*).

(*s*) See *Ibid.* For form of note of the rotation name, see *ante* No. 1006. As to obtaining the assistance of one in particular of the conveyancing counsel, see *ante* No. 1005, note (*z*).

(*t*) Dan. Pr. 1119. This certificate is usually required, whenever the original draft, as settled by the conveyancing counsel, is not left at Chambers; see *Ibid.*, note (*h*).

(*u*) See Dan. Pr. 1119; Regul. 8 Aug. 1857, Sched. No. 19. Where a plan forms part of the engrossment, the affidavit should show that such plan is a true copy of the plan approved at Chambers.

(*x*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

Or, each of the —— parchment writings now respectively produced and shown to me, and marked respectively, A., C., *&c.* (*x*),

with the draft or paper writing now produced and shown to me, and marked B. (*x*):

Or, with the —— drafts or paper writings now respectively produced and shown to me, and marked respectively B., D., *&c.* (*x*):

being the draft of the conveyance,

Or, being the drafts of the conveyance, and assignment, *or as may be*;

settled at the Chambers of the Judge to whom this action [*Or*, matter] is attached, pursuant to the order made in this action [*Or*, matter] dated the —— day of ——, 187—.

2. The said parchment writing (marked A.) is a true and correct transcript and engrossment of the said draft (marked B.).

[*If so*:] and the said parchment writing, marked C., is a true and correct transcript and engrossment of the said draft marked D., *&c.*, *&c.*

1018.

Memorandum of identity of the deed (*y*).

[*Short title, and reference to the record.*]

This is the indenture of conveyance [*Or*, mortgage; *or as may be*] referred to in my certificate in this action [*Or*, matter], dated the —— day of ——, 187—.

R. M., Chief Clerk.

1019.

Affidavit of result of searches for judgments, or other incumbrances (*z*).

In the High Court of Justice,

Chancery Division.

[*Title of the cause or matter, and reference to the record.*]

I., A. B., of [*place of business*], gentleman, the solicitor for the plaintiff [*or as may be*] in this action [*Or*, matter],

Or, I, C. D., of *&c.*, clerk to Mr. A. B., of [*&c.*; *as above*],

make oath and say, as follows:—

(*x*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

(*y*) See Dan. Pr. 1119.

(*z*) As to searches for incumbrances, see Dan. Pr. 1120, and note (*m*). The form in the text is framed to meet almost every case where a search may be necessary; but the clauses to be used in the particular case will, of course, depend upon the searches actually made under the advice of the conveyancing counsel.

1. No judgment, decree, order, rule, *lis pendens*, or writ or other process of execution: nor any memorandum or minute thereof respectively: is entered or registered from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, against, or in the name of, E. F. and G. H., or either of them, or to affect their or either of their estates, in the books kept for that purpose by the Senior Master of the Common Pleas Division of Her Majesty's High Court of Justice, pursuant to the statutes in that behalf: (1). Judgments, writs of execution, &c. (*a*).

[*If so:*] except the writs of execution [*or as may be*] specified in the (first) part of the schedule hereto:

as I know from having, on the last-mentioned day, carefully searched the said books, at the office of the said Senior Master, situate in Rolls' Garden, Chancery Lane, London.

2. No judgment, decree, or order, obtained by or on behalf of the Crown: or recognisance entered into on the proper account of the Crown: or inquisition finding a debt due to the Crown: or obligation or specialty made to the Crown: or acceptance of office from or under the Crown: or writ of *extent* or of *diem clausit extremum*, or other writ or process of execution in pursuance of, or in relation to, any such judgment, decree, order, recognisance, inquisition, obligation, specialty, or acceptance of office: nor any memorandum or minute thereof respectively: is entered or registered from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, against the said E. F. and G. H., or either of them, or to affect their or either of their estates, in the books kept for that purpose by the said Senior Master pursuant to the statutes in that behalf: (2). Crown debts, writs of extent, &c. (*b*).

[*If so:*] except the judgments [*or as may be*] specified in the (second) part of the schedule hereto:

as I know from having, on the last-mentioned day, carefully searched the said books, at the office aforesaid of the said Senior Master.

3. No annuity or rent charge: nor any memorandum or minute thereof: is entered or registered from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, against the said E. F. and G. H., or either of them, or to affect their or either of their estates, in the books kept for that purpose by the said Senior Master, pursuant to the statute in that behalf: (3). Annuities and rent charges (*c*).

[*If so:*] except the annuities or rent charges [*or as may be*] specified in the (third) part of the schedule hereto:

as I know from having, on the last-mentioned day, carefully searched the said books, at the office aforesaid of the said Senior Master.

(*a*) As to registration as a *lis pendens*, see *ante* No. 277 and note (*z*); as to the registration of judgments and orders, see note (*a*) at p. 467 *ante*; note (*e*) at p. 763 *post*; and as to the registration of writs of execution, see *post* No. 1403 and note (*f*).

(*b*) As to the registration, re-registration, and satisfaction of Crown debts, see 2 & 3 Vict. c. 11, ss. 8—11; 22 & 23 Vict. c. 35, s. 22; 23 & 24 Vict. c. 115; 28 & 29 Vict. c. 104, ss. 48, 49.

(*c*) As to annuities and rent charges, see 18 & 19 Vict. c. 15, s. 12.

(4). Inrolments in Chancery.

4. No statute, recognisance (*e*), annuity, or rent charge: nor any memorial thereof: against the said E. F. and G. H., or either of them, or to affect their or either of their estates: and no assurance or disposition of lands by the said E. F. and G. H., or either of them, under the statute 3rd and 4th William the 4th, chapter 74 (*f*): and no consent of the said E. F. and G. H., or either of them, as the protector of a settlement, to the disposition of a tenant in tail, under the last-mentioned Act (*f*): has been enrolled in the Chancery Division of Her Majesty's High Court of Justice from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive:

[*If so:*] except the statutes [*or as may be*] specified in the (fourth) part of the schedule hereto:

as I know from having, on the last-mentioned day, carefully searched the proper books kept for such inrolment by the Clerk of Inrolments of the Chancery Division of the High Court of Justice, at his office in Chancery Lane, London.

(5). Acknowledged deeds by married women (*g*).

5. No certificate of the taking of an acknowledgment by C. F., the wife of the said E. F., of any deed has been lodged from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, with the officer of the Common Pleas Division of Her Majesty's High Court of Justice appointed in that behalf:

[*If so:*] except the certificates of acknowledgment specified in the (fifth) part of the schedule hereto:

as I know from having, on the last-mentioned day, carefully searched the proper index kept of such certificates by the said officer, pursuant to the statute in that behalf, at his office in Lancaster Place, in the City of Westminster.

(6). Middlesex and Yorkshire registries (*h*).

6. No deed, conveyance, or other incumbrance: nor any memorial thereof: made or executed by the said E. F. and G. H., or either of them, of or affecting: and no judgment, statute, or recognisance to affect or bind: any honours, manors, lands, tenements, or hereditaments,

Or, the manors, lands, tenements, and hereditaments [*or as may be*] in the order in this action [*Or*, matter] dated the —— day of ——, 187—, mentioned, or any of them,

(*e*) As to the enrolment of the recognizances of auctioneers, see Dan. Pr. 1159; and of receivers, *Ibid.*, 1588.

(*f*) See 3 & 4 Will. IV. c. 74, ss. 41, 46.

(*g*) See 3 & 4 Will. IV. c. 74, ss. 85, 87, 89; 20 & 21 Vict. c. 57, s. 1; 25 & 26 Vict. c. 96.

(*h*) See, as to Middlesex: 7 Anne, c. 20; 26 & 27 Vict. c. 12; East Riding of York and Hull: 6 Anne, c. 35; North Riding: 8 Geo. II. c. 36; West Riding: 2 & 3 Anne, c. 4; 5 Anne, c. 18; and see (*a*) at p. 467 *ante*. See also 24 & 25 Vict. cc. 95, 98; 25 & 26 Vict. c. 53, s. 104.

of the said E. F. and G. H., or either of them, in the county of Middlesex,

Or, in the east riding of the county of York, or the town and county of the town of Kingston-upon-Hull,

Or, in the north riding of the county of York,

Or, in the west riding of the county of York,

has been registered from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, in the books kept for that purpose by the Registrar of deeds and so forth for the said county [*Or*, riding], pursuant to the statutes in that behalf:

[*If so:*] except the deeds [*or as may be*] specified in the (sixth) part of the schedule hereto:

as I know from having, on the last-mentioned day, carefully searched the said books at the office of the said Registrar, situate at [*State where*].

(7). County Court registry (*k*).

7. No judgment, decretal order, final decree, or order, of any County Court in England or Wales, is registered from the —— day of ——, 18—, to the —— day of ——, 187—, both days inclusive, against the said E. F. and G. H., or either of them, or to affect their or either of their estates, in the books kept for that purpose by the Registrar of County Court Judgments in London, pursuant to the statute and County Court rules in that behalf:

[*If so:*] except the judgments [*or as may be*] specified in the (eighth) part of the schedule hereto:

as I know from having, on the last-mentioned day, carefully searched the said books at the office of the said Registrar in New Street, Spring Gardens, in the city of Westminster.

(8). Creditor deeds, liquidations, and compositions.

8. No deed of arrangement, composition, inspectorship, or other deed, instrument, or agreement whatsoever, made or entered into between the said E. F. and G. H., or either of them, and their or his creditors, or any trustee on behalf of such creditors, under the provisions of "The Bankruptcy Act, 1861" (*m*), is registered in the Court of Bankruptcy in London, or with the Chief Registrar thereof, pursuant to such provisions: and no petition or resolution for liquidation by arrangement of the affairs of the said E. F. and G. H., or either of them, or for a composition arrangement between them, or either of them, and their or his creditors, under the provisions of "The Bankruptcy Act, 1869" (*n*), is filed or

(*k*) See 15 & 16 Vict. c. 54, s. 18; 28 & 29 Vict. c. 99, s. 15; and County Court Rules, 1875, Ord. XXXVII. 51, 52.

(*m*) 24 & 25 Vict. c. 134; see ss. 187, 192—194; repealed by the Bankruptcy Repeal and Insolvent Court Act, 1869 (32 & 33 Vict. c. 83), s. 20, from 1 Jan. 1870; and see Gen. Ord. in Bankruptcy, 1 Jan. 1870, rules 315—318.

(*n*) 32 & 33 Vict. c. 71, ss. 125, 126.

registered in the London Court of Bankruptcy, pursuant to such provisions, and the General Order (*o*) of the said Court in that behalf :

[*If so :*] except the deeds [*or as may be*] specified in the (eighth) part of the schedule hereto :

as I know from having, on the —— day of ——, 187—, carefully searched the proper books kept for that purpose at the Office for Registration of Arrangement Proceedings, situate in Lincoln's Inn Fields in the county of Middlesex.

(9). Bankruptcy.

9. The said E. F. and G. H. have not, nor has either of them, been adjudged bankrupt, and no fiat in bankruptcy has been issued against them, or either of them, and no petition has been filed for an adjudication of bankruptcy against them, or either of them, or for an arrangement between them, or either of them, and their or his creditors :

[*If so :*] except as appears in the (ninth) part of the schedule hereto :

as I know from having, on the —— day of ——, 187—, carefully searched the proper books kept for that purpose, at the office of the Comptroller in Bankruptcy (*p*), situate in Lincoln's Inn Fields in the county of Middlesex.

(10). Insolvency (*q*).

10. No order vesting the real and personal estates and effects of the said E. F. and G. H., or of either of them, in the provisional assignee of the estates and effects of Insolvent Debtors in England, has been made, and no assignee of the estate and effects of the said E. F. and G. H., or either of them, has been appointed by the Court for Relief of Insolvent Debtors in England :

[*If so :*] except as appears in the (tenth) part of the schedule hereto :

as I know from having, on the —— day of ——, 187—, carefully searched in the proper books kept for the entry or registry of such order and appointment at [*State where*].

(11). Improvement of Land Act, 1864 (*r*).

11. No memorial of any absolute order of the Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," or of any order of the said Commissioners apportioning a charge, or releasing or exempting lands from a charge, in pursuance thereof, is registered at the office of the Land Registry in England, in the names of the said E. F. and G. H., or either of them, as the landowners or landowner :

(*o*) See Gen. Ord. in Bankruptcy, 1 Jan. 1870, rule 315.

(*p*) See Gen. Ord. in Bankruptcy, 1 Jan. 1870, rules 237—239.

(*q*) See the Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), s. 27 (repealed as above) ; and the Bankruptcy Repeal and Insolvent Court Act, 1869 (32 & 33 Vict. c. 83), ss. 4 *et seq.*, and Gen. Ord. thereunder of 14 March, 1870.

(*r*) 27 & 28 Vict. c. 114, ss. 56, 69.

[*If so:*] except as appears in the (eleventh) part of the schedule hereto:
as I know from having, on the —— day of ——, 187—, carefully searched in the proper books kept for the entry or registry of such orders, at the office of the said Land Registry, situate in Lincoln's Inn Fields, in the county of Middlesex.

12. E. F., and C. his wife, and G. H., hereinbefore named, are respectively the same persons as the persons of those respective names who are mentioned or referred to in the opinion dated the ——, 187—, of Mr. A., the conveyancing counsel, on the title to the hereditaments inquired into pursuant to the order in this action [*Or*, matter], dated the —— day of ——, 187—. (12). Identity of persons for whose names the searches were made (*s*).

Sworn [*&c.: see ante* No. 696].

The schedule above referred to.

[*Set out the particulars of such entries, if any, as may be found; and divide the schedule into parts, as above suggested.*]

1020. Chief Clerk's certificate of result of inquiry as to title, and of the settlement (and execution) of the deed (*t*).

Formal parts: see post No. 1238.

A good title can be made to the hereditaments in the order dated the —— day of ——, 187—, in this action [*Or*, matter] mentioned.

A proper conveyance [*Or*, mortgage; *or as may be*] of the said hereditaments has been settled: consisting of an indenture (intended to be) made between [*Describe the parties, as in the deed*]; and which indenture is identified by my signature in the margin of the engrossment thereof.

The said B. A. and D. C. are the parties by whom the said indenture is to be executed before a sale is made of the consolidated £3 per cent. annuities by the said order directed to be sold [*or other contingency mentioned in the order*].

[*Or, if the deed is executed by those parties before the certificate is made* (*u*), *say:*] The said B. A. and D. C.: who were the only parties to execute the said indenture before a sale [*&c.: as above*]: have respectively duly executed the said indenture.

The said B. A. and D. C. are the parties entitled to receive the sum of £6,000 in the said order mentioned: to be raised in

(*s*) The identity of the persons for whose names the searches have been made, with the persons for whose names the searches have been directed to be made, should always be shown distinctly by the affidavit.

(*t*) See Dan. Pr. 1119, 1120. Where enrolment is required, the certificate of execution should not be issued till the conveyance has been left at the Enrolment Office, and the receipt of the Clerk of Enrolments is produced; Dan. Pr. 1120, note (*q*).

(*u*) See Dan. Pr. 1120, note (*p*); and see Chan. Funds Cons. Rules, 1874, rule 11.

manner thereby directed. The said £6,000 is to be paid to the said B. A. and D. C. jointly.

Or, in the following proportions, namely, £4,000 part thereof to the said B. A., and £2,000 residue thereof to the said D. C.

The evidence produced, *&c.*

1021.
Affidavit of execution of the deed (*v*).

Formal parts: see ante No. 693.

1. I saw B. A. and D. C., two of the parties to the indenture of conveyance [*Or*, mortgage; *or as may be*], dated the —— day of ——, 187—, now produced and shown to me, and marked A. (*x*).

[*If so:*] being the indenture mentioned in the Chief Clerk's certificate in this action [*Or*, matter] dated the —— day of ——, 187—,

duly sign, seal, and as their respective acts and deeds deliver the said indenture.

2. The signatures "——," and "——," set and subscribed to the said indenture, as two of the parties executing the same, are of the respective proper handwritings of the said B. A. and D. C.

3. The signature "——" set and subscribed to the attestation, indorsed on the said indenture, of the execution thereof by the said B. A. and D. C., is of my proper handwriting.

1022.
Certificate of execution of the deed (*y*).

Formal parts: see post No. 1238.

B. A. and D. C., in my certificate in this action [*Or*, matter] dated the —— day of ——, 187—, respectively named, have respectively duly executed the indenture of conveyance [*Or*, mortgage; *or as may be*] in such certificate mentioned to have been settled, and to be an indenture to be executed by them respectively.

The evidence produced, *&c.*

(*v*) See Dan. Pr. 1120. For another form of affidavit, see *ante* No. 598.
(*x*) Exhibit same. For form of memorandum of exhibit, see *ante*, No. 723.
(*y*) See Dan. Pr. 1120; and see Chan. Funds Cons. Rules, 1874, rule 11.

(12.) *Accounts* (*z*).

1023. Direction for a short or four-day order to issue, to leave accounts and statements, where a summons to proceed has been heard (*a*).

Master of the Rolls
[*Or*, Vice-Chancellor ——], at Chambers. } ——, 187—.

[*Title of the cause or matter, and reference to the record.*]

Appeared: [*State who appeared on the application for the direction; as thus:*]
Mr. A., for the plaintiff.
Mr. B., for the defendant C. D.
Mr. E., for F. G., having liberty to attend the proceedings.

Read: Judgment [*Or*, Order [*directing the accounts and inquiries*]], dated ——, 187—.

The Master of the Rolls [*Or*, Vice-Chancellor ——] orders, that the defendant C. D. [*or as may be*] do, on or before the —— day of ——, 187—, or subsequently within four days after service, leave at his Chambers the following accounts and statements, duly verified by affidavit; namely: [*Set out the accounts and inquiries in the words of the judgment or order, and with the like numbers attached: substituting* "a statement," *for* "an inquiry"].

To the Registrar, Mr. L. R. M., Chief Clerk.

(*z*) See Dan. Pr. 1120—1138. As to the species of accounts taken at Chambers, see Dan. Pr. 1120; and see, as to accounts in the following cases:—guardians of infants' estates, Dan. Pr. 1196, 1197, and *post* No. 1201; mortgagees, Dan. Pr. 1138, 1139, and *post* Nos. 1046—1048; partners, Dan. Pr. 1121, note (*c*), 1139, 1140, and *post* Nos. 1056, 1057; receivers, managers, and consignees, Dan. Pr. 1600—1613, and *post* Nos. 1686—1699; and executors and trustees, Dan. Pr. 1125, 1133 *et seq.*, and *post* Nos. 1026—1031. Unless otherwise directed by the Judge, the account is made out by the accounting party, and verified by his affidavit; Cons. Ord. XXXV. 33. As to the cross-examination of accounting parties upon their accounts, see Dan. Pr. 1127; the cross-examining party must give notice of the items to which the cross-examination will be directed; Dan. Pr. 1127; *Bates* v. *Eley*, 1 Ch. D. 473. As to the examination of accounting parties on interrogatories, and for forms of interrogatories and examinations, see *ante* Nos. 932 *et seq.*, and notes thereto. As to the employment of accountants, see Dan. Pr. 1048. As to referring the account to be taken before a referee, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57; and *post* Nos. 1908, 1909. As to taking accounts in a district registry, where so ordered by the Court or a Judge, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66; *supra*, note (*a*) at p. 468. On taking an account, a fee is payable of 2*s.* where the amount found to have been received without deducting any payment does not exceed £200; and where the amount does exceed £200, a fee is payable of 6*d.* for every £50, or fraction of £50; Ord. as to Court Fees, Oct. 1875, Sched.; Wilson, 506; as to the person by whom the fee is to be paid, and the power of the officer taking the account to require a deposit of stamps on account of the fees before taking the account, see *Ibid.*

(*a*) See Dan. Pr. 1121. For form of order, see Seton, ed. 3, 1232, No. 1. The registrars request that this direction may be indorsed on the summons to

1024.

Summons for a short or four-day order to leave accounts and statements (*b*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be: see ante* No. 968], that the defendant C. D. [*or as may be*] may be ordered, within four days after service, to leave in my Chambers the following accounts [*Continue as in* No. 1023 *ante, to end*].

1025.

Summons for further time to leave accounts (*c*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that he may have until the —— day of ——, 187—, to leave at my Chambers the accounts and statements, verified by affidavit, directed to be left by him thereat, pursuant to the judgment [*Or*, order], dated the —— day of ——, 187—.

1026.

Affidavit by joint executors and trustees, verifying their accounts, and answering the usual inquiries as to real and personal estate (*k*).

In the High Court of Justice,

Chancery Division.

[*Title of the action or matter, and reference to the record.*]

We, A. B., of [*residence and addition*], C. D., of, &c., and E. F., of, &c., the above-named defendants [*or as may be*], severally make oath and say, as follows :—

1. We have, according to the best of our knowledge, remembrance, information, and belief, set forth in the first schedule here-

1) Inventory of personal estate at death (*l*).

proceed, instead of being issued as a separate document. As to the mode of enforcing the order, see *post* note (*a*) at p. 687. As to directions to bring in an account, see Dan. Pr. 1121; Cons. Ord. XXXV. 16.

(*b*) See Dan. Pr. 1121. For orders in like case, see *Butt* v. *Harcourt*, V.-C. S. at Chambers, 11 June, 1870, Reg. Lib. A. 1618; Seton, ed. 3, 1232, No. 1. As to the mode of enforcing the order, see *post* note (*a*) at p. 687.

(*c*) See Dan. Pr. 1122; Cons. Ord. XXXVII. 17, 18. For order in like case, see *Croskey* v. *European, &c., Steam Co.*, V.-C. W. at Chambers, 13 Jan. 1864, Reg. Lib. A. 55. The application should be supported by an affidavit, showing due diligence, and that further time is necessary; Dan. Pr. 1222. As to when a summons is unnecessary, see *Ibid.*, note (*m*).

(*k*) See Dan. Pr. 1126, note (*c*). For this form, see Regul. 8 Aug. 1857, Sched. No. 6. This form of affidavit, as far as applicable, should be strictly adhered to. As to the preparation of the affidavit and accounts, see Dan. Pr. 1123—1126.

(*l*) See Dan. Pr. 1124. The first schedule to the affidavit should show the state of the assets at the testator's death; the second, at the time the affidavit is sworn; and the account of personal estate, verified by the affidavit, should disclose all the receipts and payments in respect of the assets between those periods. Thus, where a testator leaves a sum of bank stock, which the executor afterwards sells, and invests the proceeds in consols: the bank stock will appear in the first schedule; the proceeds of the sale on the debit side of the account; the cost of the consols on the credit side; and the amount of the consols will form an item in the second schedule, as an asset outstanding or undisposed of; Dan. Pr. 1125.

under written (*l*), a full, true, and particular account and inventory of the personal estate of or to which G. H., the testator, in the judgment [*Or*, order], dated the —— day of ——, 187—, made in this action [*Or*, matter], named or referred to, and who died on the —— day of ——, 187—, was possessed or entitled at the time of his death.

[*If the judgment or order directs only an account of personal estate not specifically bequeathed, add:*] and not by him specifically bequeathed.

2. Save what is set forth in the said first schedule,

[*If so:*] and what is by the said testator specifically bequeathed,

the said testator was not, to the best of our knowledge, information, or belief, at the time of his death possessed of, or entitled to, any debt or sum of money due to him from us, or any or either of us, on any account whatsoever, nor to any leasehold or other personal estate, goods, chattels, or effects, in possession or reversion, absolutely or contingently, or otherwise howsoever.

3. The said testator's funeral expenses have been paid; and the same consist of the items of disbursement numbered —— and —— in the account marked A., hereinafter referred to. (2). Funeral expenses (*m*).

[*Or, if not paid, state the amount due, and to whom due; as thus:*] The said testator's funeral expenses amount to £——; and the same remain due to J. S., of N., in the county of M., undertaker.

4. We have, in the account marked A. now produced and shown to us (*o*), according to the best of our knowledge, information and belief, set forth a full, true and particular account of the personal estate of the said testator, (3). Account of personal estate (*n*).

[*If so:*] not by him specifically bequeathed,

which has come to our hands, or to the hands of any or either of us, or to the hands of any person or persons by our, or any or either of our order, or for our, or any or either of our use: with the times when, the names of the persons from whom, and on what account, the same has been received; and also a like account of the disbursements, allowances, and payments made by us, or any or

(*l*) See note (*l*), p. 552.

(*m*) See Dan. Pr. 1124.

(*n*) See Dan. Pr. 1124; note (*l*), *supra*. For form of judgment dispensing with the usual personal estate account: the estate being ascertained at the hearing, and particularised in the decree: see *Osborne* v. *Marsden*, M. R. March, 1863, Reg. Lib. B. 535.

(*o*) For form of this account, see *post* No. 1027. Where the judgment or order directs that, in taking the account, capital is to be distinguished from income, the account should be divided into two parts: the first embracing the transactions as to capital; the second, as to income; and the affidavit should be varied accordingly.

either of us, in respect of, or on account of, the said testator's funeral expenses, debts, and personal estate: together with the times when, the names of the persons to whom, and the purposes for which, the same were disbursed, allowed, or paid.

5. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said account marked A., we have not, nor have nor has any or either of us, nor have nor has any other persons or person by our, or any or either of our order, or for our, or any or either of our use (*p*), possessed, received, or got in, any part of the said testator's personal estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed, on the account aforesaid.

(4). Personal estate outstanding (*q*).

6. To the best of our knowledge, information, and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in the second schedule hereunder written (*r*).

7. Save what is set forth in the said second schedule, there is not, to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding, or undisposed of.

(5). Real estate at death (*s*).

8. We have, according to the best of our knowledge, remembrance, information, and belief, set forth in the third schedule hereunder written the particulars of all the real estate which the said testator was seised of, or entitled to, at the time of his death.

[*If the judgment or order directs the estates at the date of the testator's will to be distinguished from the estates at the testator's death, substitute for paragraph* 8 *above the following:*]

8. We have, according to the best of our knowledge, remembrance, information, and belief, set forth in the first part of the third schedule hereunder written the particulars of all the real estate which the said testator was seised of, or entitled to, at the date of his will, and in the first and second parts of such schedule [*or as may be*] the particulars of all the real

(*p*) This should accord with the judgment or order directing the account to be taken.

(*q*) See Cons. Ord. XXIII. 14; Dan. Pr. 1123, note (*q*), 1124; note (*l*), *supra*.

(*r*) This schedule should contain all the existing assets: such as bank annuities, whether in the executors' names or in Court, and any cash in the hands of the executors; Bloxam, 48; note (*l*), *supra*.

(*s*) See Dan. Pr. 1125.

estate which the said testator was seised of, or entitled to, at the time of his death.

9. Save what is set forth in the said schedule, the said testator was not, to the best of our knowledge, information, or belief, at (the date of his will, or at) the time of his death [*or as may be directed*], seised of, or entitled to, any real estate, in possession, remainder, or reversion, absolutely or contingently, or otherwise howsoever.

(6). Incumbrances (*s*).

10. We have, according to the best of our knowledge, information, and belief, set forth in the fourth schedule hereunder written the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect (*t*).

(7). Account of rents and profits (*s*).

11. We have, in the account marked B. now produced and shown to us (*u*), according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's real estate which have come to our hands, or to the hands of any or either of us, or to the hands of any person or persons by our, or any or either of our order, or for our, or any or either of our use (*x*) ; and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same has been received, and the times when the same became due ; and also a like account of the disbursements, allowances, and payments, made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say : that save and except as appears in the said account, marked B., we have not, nor have nor has any or either of us, nor have nor has any other persons or person by our or any or either of our order, or for our or any or either of our use (*y*), possessed, received, or got in, any rents or profits of the said testator's real estate, nor any

(*s*) See Dan. Pr. 1125.

(*t*) If there is no incumbrance, alter the paragraph accordingly ; see *post* No. 1031, par. 3.

(*u*) For form of this account, see *post* No. 1028.

(*x*) This should accord with the judgment or order directing the account to be taken.

(*y*) This should accord with the judgment or order directing the account to be taken.

money in respect thereof; and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

The first schedule above referred to.

Account of the testator's personal estate, at his death (*yy*).

[*Set out the particulars; as in the following examples:*]

1. £50, cash in the house.
2. £100, cash at the testator's bankers, Messrs. A. & B.
3. £1,000, consolidated £3 per cent. annuities, standing in the testator's name.
4. £10, due from John James, for half year's rent of house at ——, to Michaelmas, 187—.
5. £32 6*s.* 8*d.*, balance remaining due from John Thomas, on account of half year's rent of farm at ——, to Michaelmas, 187—.
6. £300, a debt due from Samuel Jones, on a bond: with interest from ——, at —— per cent.
7. A leasehold house situate at ——, held under a lease for a term of —— years, which will expire on ——, 18—, at a rent of £—— a year: underlet to James Evans for a term which will expire on ——, 18—, at a rent of £50 a year.
8. £25, half a year's rent due from the said James Evans at Christmas, 18—.

The second schedule above referred to.

Personal estate outstanding or undisposed of (*z*).

[*Set out the particulars; as in the above examples*].

(*yy*) See note (*l*) *supra*.
(*z*) See notes (*l*), (*r*) *supra*.

The third schedule above referred to.

Real estate (*a*).

[*Set out a short particular of the real estate; as in the following examples* (*b*):]

1. A freehold house, and grounds attached, containing about three acres, situate at ——, and called "The Evergreens:" in the testator's occupation at his death, and now in hand.

2. A freehold farm, called "Low End Farm," situate at ——, containing about 500 acres, and in the occupation of James Evans, under a lease for a term which will expire at Michaelmas, 18—, at the yearly rent of £600.

3. Twenty freehold cottages, situate at ——, aforesaid, in the occupation of Michael Sullivan, *&c.*, as weekly tenants, at rents amounting collectively to £—— a year.

4. Four copyhold closes of meadow land, situate at ——, aforesaid, in the occupation of Samuel Jones, as yearly tenant, at £12 a year, and held of the Manor of Pennefathers.

The fourth schedule above referred to.

Incumbrances affecting the real estate.

[*Set out a short particular of the incumbrances; and show what part of the above real estate is subject to each; as in the following examples* (*b*):]

1. The mansion and grounds numbered 1 in the third schedule above written are subject to a mortgage created by the testator, by indenture dated, *&c.*, in favour of Reuben Johnson, and now vested in Alfred Symes, of [*residence and addition*], as security for £500 due to him, with interest at £5 per cent.

2. The farm numbered 2 in the said third schedule is charged with the payment of an annuity of £40 to Jemima Brown, of, *&c.*, widow, during her life, under the will of the testator's brother Ephraim Hughes.

3. The close of land numbered 4 in the said third schedule is subject to a conditional surrender made thereof by the testator on the —— day of ——, 187—, in favour of the said Alfred Symes, as security for the payment to him of £300, with interest at £4 per cent.

(*a*) As to dividing this schedule into parts, see par. 8 of the affidavit, *sup.*

(*b*) These examples are not given in the form of affidavit, in Regul. 8 Aug. 1857, Sched. No. 6.

1027
Account of personal estate, referred to in No. 1026 (*c*).

In the High Court of Justice,
Chancery Division.

A.

[*Short title of the action or matter, and reference to the record.*]
This account marked A., was produced and shown to A. B., C. D., and E. F. [*or as may be*], and is the account referred to in their affidavit, sworn this —— day of ——, 187—,
before me,
[*Signature of the Commissioner or Officer before whom the affidavit is sworn: see ante* No. 696.]

RECEIPTS.					DISBURSEMENTS.				
No. of Item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.	No of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18—.			£ *s. d.*		18—.			£ *s. d.*
1		. . . .	Found in house		1		James Price . .	Undertaker's bill for funeral . .	
2		Evans & Co. . .	Balance at bankers . .		2		Messrs. A. & B.	Solicitors' bill for probate .	
3		. . . .	Half year's dividend on £2000 bank £3 per cent. annuities, due ——.		3		John George . .	A debt due to him for medical attendance . .	
4		John James . .	Half year's rent of freehold, due ——.		4		James Price . .	Bond debt of £1000, and £25 for interest thereon from —— to ——.	
5		Samuel Jones .	Bond debt of £300 and interest from —— to ——.						
6		James Evans .	Half year's rent of leasehold house, due—.						
7		William Williams	Produce of sale of the above leasehold house . .						

(*c*) See Dan. Pr. 1124, 1126. For this form, see Regul. 8 Aug. 1857, Sched. No. 4. The items on each side should be placed in chronological order, so that the state of the account may be ascertained at any date, and be numbered consecutively; and the numbers of the items of debit should form a distinct series from the numbers of the items of credit; as shown in the above examples; see Dan. Pr. 1126, note (*d*). The account should include any sums received since the judgment or order; Dan. Pr. 1126. As to including the costs of the administration, or in the action, see *Ibid.* As to exhibiting, and authenticating alterations in, the account, see *Ibid.*, 790, 1059, 1126; Regul. 8. Aug. 1857, rules, 10, 11. The account must be written on foolscap paper, bookwise; *Ibid.*, rule 17; Dan. Pr. 1126. As to handing copies of the account to the other parties, see *Ibid.*, 1127; Cons. Ord. XXXV. 26. As to obtaining copies otherwise, see Cons. Ord. XXXVI. 3—6, 13; Regul. to Ord. IV. 1.

1028. Account of rents and profits, referred to in No. 1026 (*d*).

In the High Court of Justice,
Chancery Division.

B.

[*Short title of the action or matter, and reference to the record.*]

This account, marked B., was produced and shown to A. B., C. D., and E. F. [*or as may be*], and is the account referred to in their affidavit, sworn this —— day of ——, 187—,
before me,

[*Signature of the Commissioner or Officer before whom the affidavit is sworn: see ante* No. 696.]

RECEIPTS.					DISBURSEMENTS.				
No. of Item.	Date when received.	Names of persons from whom received.	On what account, and in respect of what part of the estate received, and when due.	Amount received.	No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18—.			£ *s. d.*		18—.			£ *s. d.*
1		John James . .	Half year's rent for farm in parish of ——, due——		1		Sun Insurance office . .	One year's insurance against fire, due ——	
2		Thomas Jones .	One quarter year's rent of house at ——, due ——		2		Thomas Carpenter . . .	Repairs at John James's farm . .	
					3		James Francis .	Income tax half year due 10th October, 187— . .	
3		John James . .	Same as No. 1, due ——						

1029. Affidavit by joint executors and trustees, verifying their supplemental accounts of personal estate and rents and profits (*e*).

[*Title—and names, &c., of the deponents: as in* No. 1026 *ante.*]

1. We have in the account marked C. now produced and shown to us (*f*), according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of the personal estate of G. H., the testator in the judgment [*Or*, order] made in this action [*Or*, matter], dated the —— day of ——, 187—, named or referred to,

[*If so:*] and not by him specifically bequeathed,

which, since the —— day of ——, 187— (the time to which our former account thereof, marked A., verified by our affidavit filed in this cause the —— day of ——, 187—, was made up and rendered), has come to our hands [*Continue as in paragraph* 4 *of* No. 1026 *ante, to the end of that paragraph*].

2. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that

(*d*) See Dan. Pr. 1125. For this form, see Regul. 8 Aug. 1857, Sched. No. 5; and see note to No. 1027 *ante.*

(*e*) See Dan. Pr. 1126, and notes to No. 1026 *ante.*

(*f*) This account will be the same in form as the previous account; see

save and except as appears in the said accounts marked A. and C., we have not, nor have nor has any or either of us, nor have nor has any other persons or person by our or any or either of our order, or for our or any or either of our use (*g*), possessed, received, or got in, any part of the said testator's personal estate, nor any money in respect thereof; and that the said account marked C. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed, on the account aforesaid.

3. To the best of our knowledge, information, and belief, the personal estate of the said testator now outstanding, or undisposed of, consists of the particulars set forth in the schedule hereunder written (*h*).

4. Save what is set forth in the said schedule, there is not, to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding, or undisposed of.

5. We have, in the account marked D., now produced and shown to us (*i*), according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's real estate, which since the —— day of ——, 187— (the time to which our former account thereof, marked B., verified by our (said) affidavit filed in this cause the —— day of ——, 187—, was made up and rendered), have come to our hands, or to the hands of any or either of us, or to the hands of any person or persons by our or any or either of our order, or for our or any or either of our use (*g*); and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

6. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said accounts marked B. and D., we have not, nor have nor has any or either of us, nor have nor has any other persons or person by our or any or either of our order, or for our or any or either of our use (*g*), possessed, received, or got in, any rents or profits of the said testator's real estate, nor any money in respect thereof; and that the said account marked D.,

ante No. 1027; but care should be taken to distinguish it by a different letter, and to number the items on each side *in continuation* of the numbers of the items in the previous account, as neglect so to do is apt to lead to much confusion.

(*g*) This should accord with the judgment or order directing the account to be taken.

(*h*) As to this schedule, see *ante* No. 1026, notes (*l*), (*r*).

(*i*) This account will be the same in form as the previous account; see *ante* No. 1028; but see *sup.*, note (*f*).

does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed as above stated.

The schedule above referred to.

[*Set out the particulars of the personal estate outstanding or undisposed of: for examples, see first schedule to* No. 1026 *ante.*]

1030. Affidavit by a sole executor or administrator, verifying his account, and answering the usual inquiries as to personal estate (*k*).

Formal parts: see ante No. 693.

1. I have, according to the best of my knowledge, remembrance, information, and belief, set forth in the first schedule hereunder written a full, true, and particular account and inventory of the personal estate of or to which G. H., the testator [*Or,* intestate], in the judgment [*Or,* order] made in this action [*Or,* matter], dated the —— day of ——, 187—, named or referred to, and who died on the —— day of ——, 187—, was possessed or entitled at the time of his death.

[*In a case of testacy, add, if the judgment or order is so qualified:*] and not by him specifically bequeathed.

2. Save what is set forth in the said first schedule,

[*In a case of testacy, add, if the judgment or order is so qualified:*] and what is by the said testator specifically bequeathed, the said testator [*Or,* intestate] was not, to the best of my knowledge, information, or belief, at the time of his death possessed of, or entitled to, any debt or sum of money due to him from me, on any account whatsoever [*Continue as in paragraph* 2 *of* No. 1026 *ante, to the end of paragraph* 3*: substituting* "intestate's," *for* "testator's," *where applicable*].

4. I have, in the account marked A., now produced and shown to me (*l*), according to the best of my knowledge, information, and belief, set forth a full, true, and particular account of the personal estate,

[*In a case of testacy, add:*] of the said testator, [*and, if the judgment or order is so qualified, add also:*] not by him specifically bequeathed,

[*In a case of intestacy, add:*] of the said intestate,

which has come to my hands, or to the hands of any person or persons by my order, or for my use (*m*); with the times when, the names of the persons from whom, and on what account the same has been received; and also a like account of the disbursements, allowances, and payments, made by me in respect of, or on account of, the said testator's [*Or,* intestate's] funeral expenses, debts, and personal estate: together with the times when, the names of the

(*k*) See notes to No. 1026 *ante.* This and the next form can be readily combined, where the executor has also to account as trustee of the real estate.

(*l*) For form of this account, see *ante* No. 1027.

(*m*) This should accord with the judgment or order directing the account to be taken.

persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, further say: that save and except as appears in the said account marked A., I have not, nor have nor has any other persons or person by my order, or for my use (*n*), possessed, received, or got in any part of the said testator's [*Or*, intestate's] personal estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed, on the account aforesaid.

6. To the best of my knowledge, information, and belief, the personal estate of the said testator [*Or*, intestate] now outstanding, or undisposed of, consists of the particulars set forth in the second schedule hereunder written (*o*).

7. Save what is set forth in the said second schedule, there is not, to my knowledge, information, or belief, any part of the said testator's [*Or*, intestate's] personal estate now outstanding or undisposed of.

The first [*Or*, second] schedule above referred to.

[*The same as the first* [*Or, second*] *schedule to* No. 1026 *ante.*]

1031. Affidavit by a sole trustee of a testator's will, verifying his account of rents and profits, and answering the usual inquiries as to real estate (*p*).

Formal parts: see ante No. 693.

1. I have, according to the best of my knowledge, remembrance, information, and belief, set forth in the first schedule hereunder written the particulars of all the real estate which G. H., the testator in the judgment [*Or*, order] made in this action [*Or*, matter], dated the —— day of ——, 187—, named or referred to, and who died on the —— day of ——, 187—, was seised of, or entitled to [*Continue as in paragraph* 8 *of* No. 1026 *ante, to the end of that paragraph*].

2. Save what is set forth in the said schedule, the said testator was not, to the best of my knowledge, information, or belief, at (the date of his will, or at) the time of his death [*or as may be directed*], seised of, or entitled to, any real estate in possession, remainder, or reversion, absolutely or contingently, or otherwise howsoever.

3. I have, according to the best of my knowledge, information, and belief, set forth in the second schedule hereunder written the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

[*Or, if there is no such incumbrance, say:*] 3. To the best of my knowledge, information, and belief, there is not any

(*n*) This should accord with the judgment or order directing the account to be taken.

(*o*) As to this schedule, see *ante* No. 1026, notes (*l*), (*r*).

(*p*) See *ante* No. 1030, note (*k*).

incumbrance affecting the said testator's real estate, or any part or parts thereof.

4. I have, in the account marked A., now produced and shown to me (*q*), according to the best of my knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's real estate which have come to my hands, or to the hands of any person or persons by my order, or for my use (*r*) ; and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due ; and also a like account of the disbursements, allowances, and payments, made by me in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, further say that, save and except as appears in the said account marked A., I have not, nor have nor has any other persons or person by my order, or for my use (*r*), possessed, received, or got in, any rents or profits of the said testator's real estate, nor any money in respect thereof ; and that the said account marked A. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

The first [*Or*, second] schedule above referred to.

[*The same as the third* [*Or, fourth*] *schedule to* No. 1026 *ante.*]

1032. Affidavit by joint executors and trustees, of non-receipt of (further) personal estate, or rents and profits (*s*).

[*Title—and names, &c., of the deponents : as in* No. 1026 *ante.*]

1. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, say, that we have not, nor have nor has any or either of us, nor have nor has any other persons or person by our or any or either of our order, or for our or any or either of our use (*r*),

[*If so :*] since the —— day of ——, 187—, the time to which our accounts thereof, marked respectively A. and B., verified by our affidavit filed in this cause the —— day of ——, 187—, were made up and rendered,

possessed, received, or got in, any part of the personal estate of G. H., the testator in the judgment [*Or*, order], made in this action [*Or*, matter], dated the —— day of ——, 187—, named or referred to, nor any money in respect thereof, nor any rents or profits of the said testator's real estate, nor any money in respect thereof.

(*q*) For form of this account, see *ante* No. 1028.

(*r*) This should accord with the judgment or order directing the account to be taken.

(*s*) See Dan. Pr. 1121.

1033.

Affidavit by a sole executor (or administrator) and trustee, of non-receipt of (further) personal estate, or rents and profits (*t*).

Formal parts: see ante No. 693.

1. I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, say, that I have not, nor have nor has any other persons or person by my order, or for my use (*u*),

[*If so:*] since the —— day of ——, 187—, the time to which my accounts thereof, marked respectively A. and B., verified by my affidavit filed in this cause the —— day of ——, 187—, were made up and rendered,

possessed, received, or got in, any part of the personal estate of G. H., the testator [*Or*, intestate] in the judgment [*Or*, order], made in this action [*Or*, matter], dated the —— day of ——, 187 —, named or referred to, nor any money in respect thereof, nor any rents or profits of the said testator's real estate, nor any money in respect thereof.

1034.

Negative affidavit by the executor of a deceased executor, as to the personal estate of the original testator (*x*).

Formal parts: see ante No. 693.

1. I believe that T. R., the testator in the judgment [*Or*, order] in this action [*Or*, matter], dated the —— day of ——, 187—, named, was at the time of his death possessed of some personal estate, including certain household furniture, but I cannot, as to my knowledge, information, or belief, say what were the particulars or value thereof, save and except that it appears by the probate Act that the amount of the personal estate of the said testator was sworn to be under the value of £——. Save and except as aforesaid, I cannot as to my knowledge, remembrance, information, or belief, set forth a full, true, and particular, or any, account or inventory of the personal estate which the said testator T. R. was possessed of, or entitled to, at the time of his death.

2. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, further say, that, save as aforesaid, the said T. R. was not, at the time of his death, possessed of, or entitled to, any debt or sum of money due to him from me, or from R. S., deceased, in the said judgment [*Or*, order] named, the executor of the said testator T. R., on any account whatsoever; nor to any leasehold or other personal estate, goods, chattels, or effects, in possession or reversion, absolutely or contingently, or otherwise howsoever.

3. I cannot, as to my knowledge, information, or belief, set forth a true and particular, or any, account of the personal estate of the said testator T. R., which came to the hands of the said R. S., or to the hands of any person or persons by his order, or for his use; or a like or any account of the disbursements, allowances,

(*t*) See Dan. Pr. 1121.

(*u*) This should accord with the order directing the account to be taken.

(*x*) As to the representatives of a deceased executor and the remedies against them, see Dan. Pr. 222.

or payments made by the said R. S., in respect of the funeral expenses, debts, or personal estate of the said testator T. R.

4. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, further say, that no part of the personal estate of the said testator T. R. has come to my hands, or to the hands of any other person or persons by my order, or for my use.

5. There is not to my knowledge, information, or belief, any part of the personal estate of the said testator T. R., now outstanding or undisposed of.

1035. Notice of having left accounts, and filed affidavit (*y*).

Formal parts : see ante No. 21.

Take notice, that I have this day left at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], the accounts of the defendant A. B. [*or as may be*], in answer to the directions numbered 1, 2, *&c.*, in the judgment [*Or*, order], dated ——, 187—, and filed an affidavit of the said defendant [*or as may be*] verifying the said accounts, and answering the inquiries numbered 6, 7, *&c.*, in the said judgment [*Or*, order].

1036. Surcharge against an accounting party (*z*).

In the High Court of Justice,
Chancery Division.

[*Short title of the action or matter, and reference to the record.*]

The surcharge of the plaintiff [*or as may be*] against the defendant A. B. [*or as may be*], under the account numbered ——, in the judgment [*Or*, order] in this action [*Or*, matter] dated the —— day of ——, 187—.

The plaintiff [*or as may be*] seeks to charge the defendant A. B. [*or as may be*] with the several sums of money hereinafter particularised, beyond what the defendant A. B. [*or as may be*] has, by his account marked A. left at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], on the —— day of ——, 187—, pursuant to the said judgment [*Or*, order], admitted to have been received by him ; that is to say :

[*Set out particulars of the surcharge, in a short and succinct manner ; as thus :*]

No. of item.	Date when received.	Names of persons from whom received.	Particulars of amount received.	Amount received.
				£ *s.* *d.*
73	18—, Jan. 4	John Thomas . .	Half year's rent of Bolder Farm, due Michaelmas, 18— .	30 1 9

(*y*) See Dan. Pr. 1126 ; Cons. Ord. XXXV. 27.

(*z*) For the practice as to surcharging, see Dan. Pr. 1127 ; Cons. Ord.

1037.

Notice thereof (*a*).

Formal parts : see ante No. 21.

Take notice that I have this day left at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——] a statement of several sums of money therein and hereinafter particularised, with which the plaintiff [*or as may be*] seeks to charge the defendant A. B. [*or as may be*], beyond what the said defendant [*or as may be*] has, by his account marked A. left at the said Chambers on the —— day of ——, 187—, admitted to have been received by him ; that is to say :

[*Set out particulars : as in the surcharge, ante* No. 1036.]

And take notice that I have this day filed an affidavit of the plaintiff [*or as may be*] in support of such statement ; and that the Chief Clerk has appointed ——, the —— day of ——, 187—, at —— of the clock in the —— noon, at the said Chambers, to proceed upon the said statement.

1038.

Summons for special directions as to the mode of taking or vouching an account (*b*).

Formal parts : see ante No. 881.

on the part of the defendant [*or as may be*], that in taking the account Nod.—directed by the judgment [*Or*, order] dated the ——, 187— [*Describe the directions required ; as thus :*]

the book of account marked A., referred to in the affidavit of L. B. filed the ——, 187— : being the book in which the said L. B. kept an account of his disbursements in respect of the estate of T. H. B., the testator :

may be taken as *primâ facie* evidence of the truth of the payments referred to in the said affidavit [*or as may be*] : with liberty for any of the parties interested therein to take such objections thereto as they may be advised (*c*).

XXXV. 34. As to cross-examining the accounting party, see Dan. Pr. 1127 ; and as to production of documents by him, see *Ibid.*

(*a*) See Dan. Pr. 1127 ; Cons. Ord. XXXV. 34.

(*b*) See Dan. Pr. 1130—1132 ; 15 & 16 Vict. c. 86, s. 54. For the mode of vouching accounts at Chambers, see Dan. Pr. 1127—1132. As to settled accounts, see *Ibid.*, 575, *et seq.*, 1136. As to surcharging and falsifying, see *Ibid.*, 1137 ; and for forms of orders, see Seton, ed. 3, 108, 111. As to computing interest on a stated account, and on balances where rests directed, and as to striking a balance, see Dan. Pr. 1136, 1137. As to the form of the Chief Clerk's certificate of the result of the account, and as to transcripts of altered accounts, see *Ibid.*, 1217 ; Cons. Ord. XXXV. 46 ; and *post* No. 1238.

(*c*) For orders in like case, see *Godfray* v. *Brooke*, V.-C. W. at Chambers, 27 June, 1865, Reg. Lib. A. 1275 ; *Clark* v. *Clark*, M. R. at Chambers, 14 Nov. 1866, Reg. Lib. A. 2514 ; *O'Toole* v. *Brown*, M. R. at Chambers, 2 Mar. 1868, Reg. Lib. B. 496.

1039. Request that Taxing Master of Chancery Division will moderate bill of costs claimed at Chambers (*d*).

Formal parts: see ante No. 1005.

The proper Taxing Master is requested to tax and settle the accompanying bill of costs, identified by my initials thereon: which is claimed against the estate of A. B., the testator [*or as may be*] in this action [*Or*, matter], under the judgment [*Or*, order] therein dated the —— day of ——, 187—.

Or, to assist in making a proper allowance in respect of the accompanying bill of costs, identified, *&c.*, in taking the accounts of the defendant [*or as may be*], the executor [*or as may be*] of A. B., the testator [*&c.: as above*]: in which accounts the said bill of costs is claimed as a payment by the said defendant [*or as may be*] to his solicitor.

1040. Another form of such request (*e*).

Formal parts: see ante No. 1005.

The amount of the accompanying bill of costs, signed with my initials, is claimed in the accounts of the defendant C. D., the executor [*or as may be: see ante* No. 1039], as a payment made by him as such executor [*or as may be*] to his solicitor. The proper Taxing Master is requested to peruse such bill, and state whether the items are fair and proper: in order to assist the Judge in making a proper allowance in respect thereof.

1041. Request that Taxing Officer of another division or Court will tax a bill of costs claimed in the Chancery division (*f*).

Formal parts: see ante No. 1005.

The Master of the Rolls [*Or*, Vice-Chancellor ——; *or as may be*] requests the Taxing Officer of the House of Lords [*Or*, one of the Masters of the Queen's Bench Division; *or other Officer to whom the bill is to be sent*] to tax the within bill of costs (*g*); and to report to him the amount at which he has allowed the same.

(*d*) See Dan. Pr. 1108, 1135, 1309, 1314, 1315; 6 & 7 Vict. c. 73, s. 42; Cons. Ord. XL. 24, 25. As to the costs to be allowed, and other just allowances to be made, in taking the account of an executor, &c., see Dan. Pr. 1132—1136; Cons. Ord. XXIII. 16.

(*e*) See *ante* No. 1039, note (*d*). This form has been adopted at the Master of the Rolls' Chambers, since the case of *Allen* v. *Jarvis*, L. R. 4 Ch. 616, L.JJ.

(*f*) See Dan. Pr. 1135, note (*z*); 1314, note (*b*); 1315, note (*e*).

(*g*) The request is usually indorsed on the bill itself. Where the bill is to be taxed as between solicitor and client, or on other special terms, the request should be enlarged accordingly.

1042.
Admission of assets by or on behalf of an executor or administrator (*h*).

[*Title of action or matter, and reference to the record.*]

I, (the defendant) A. B., the executor of the will [*Or*, administrator of the estate and effects] of C. D., the testator [*Or*, intestate] in this action [*Or*, matter],

Or, I, E. F., as solicitor of, and for and on behalf of, A. B., the executor [*&c. : as above*],

do hereby admit assets of the said testator [*Or*, intestate] for the purposes of this action [*Or*, matter].

Or, for payment of all his debts and the costs of this cause.

Or, for payment of the legacy given by his will to G. H ; *or as may be.*

Dated this —— day of ——, 187—.

A. B. [*Or*, E. F.]

1043.
Summons for transfer of stock, and payment of cash, into Court (*i*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty

Or, that the defendant A. B. [*or as may be*] may be ordered, on or before the —— day of ——, 187—, or subsequently within seven days after service,

to transfer into Court to the credit of this action [*Or*, matter] [*Describe the short title, and account, if any ; as thus :*] Jones *v.* Smith, 187—, J. No. 15, "The personal estate account," £—— consolidated £3 per cent. annuities [*or as may be*], and to pay into Court to the like credit, the sum of £——, cash, respectively appearing by his affidavit filed in this cause on the —— day of ——, 187—, [*Or*, admitted by him] to be standing in his name in the books of the Bank of England, and in his hands, and to be parts of the personal estate of C. D., the testator [*Or*, intestate] in this action [*Or*, matter] ; and that the said £—— cash may be invested in [*Continue as in* No. 1975 *post, to the end*].

(13.) *Foreclosure and Redemption Suits.*

1044.
Affidavit by a mortgagee not in possession, of amount due to him under a judgment in a foreclosure or redemption action (*k*).

Formal parts : see ante No. 693.

1. There is due to me upon and by virtue of my mortgage security dated the —— day of ——, 187—, in the judgment [*Or*, order] in this action dated the —— day of ——, 187—,

(*h*) See Dan. Pr. 1070.

(*i*) See Dan. Pr. 1137 ; *Ibid.*, 1619—1628 ; *London Syndicate Limited* v. *Lord*, 26 W. R. 427. For the mode of transferring stock into Court, see *post*, note (*a*) to No. 1975. For the mode of paying cash into Court, see *post*, note (*o*) to No. 1974. For the mode of enforcing the order, see *post*, note (*a*) at p. 687.

(*k*) Dan. Pr. 858, 1138.

mentioned [*or as may be* (*m*)], the sum of £A. for principal money, and the sum of £B. for interest (less property tax) thereon, computed at the rate of £C. per cent. per annum, from the —— day of ——, 187—, to the —— day of ——, 187—: making together the sum of £D.: exclusive of my costs of this action [*or as may be*].

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor has nor have any other person or persons by my order or for my use, received any sum or sums of money for or on account of the hereditaments comprised in my said mortgage security, or any part thereof; nor any security or satisfaction whatsoever for the said principal money, and interest respectively, or any part or parts thereof: save and except the said mortgage security [*or as may be*].

1045. Chief Clerk's certificate of amount due to a mortgagee not in possession (*n*).

Formal parts: see post No. 1238.

1. There is due to the plaintiff [*or as may be*], upon and by virtue of his mortgage security in the judgment dated the —— day of ——, 187—, mentioned, the sum of £A. for principal money, and the sum of £B. for interest (less property tax) thereon, at the rate of £C. per cent. per annum, from the —— day of ——, 187—, to the date of this certificate. The said sums of £A. and £B., added to the sum of £D., certified by the Taxing Master to be the amount of the costs of the said plaintiff [*or as may be*] of this action, make together the sum of £E.

2. There will also be due to the plaintiff [*or as may be*] on the —— day of ——, 187—, being the expiration of six calendar (*o*) months from the date of this certificate, the sum of £F. for half a year's interest (less property tax), at the rate aforesaid, on the said sum of £A. to the said —— day of ——, 187—. The said sums of £E. and £F. make together the sum of £G.

(Monday), the —— day of ——, 187—, between the hours of twelve and one of the clock in the afternoon, and the Chapel of the Rolls in the Rolls' Yard, Chancery Lane, London, are appointed as the time and place at which the defendant C. D. is to pay the said sum of £G. to the plaintiff A. B. [*or as may be*].

(*m*) The affidavit should accord with the words of the judgment or order directing the account.

(*n*) See Dan. Pr. 858, 1139.

(*o*) *Ibid.*, 858, note (*l*).

1046. Affidavit by a mortgagee in possession, verifying his account of principal and interest, repairs and rents, without rests (*p*).

Formal parts : *see ante* No. 693.

1. I have, in the account marked A. now produced and shown to me (*q*), according to the best of my knowledge, information, and belief set forth an account of the several matters hereinafter mentioned, which are inquired after by the judgment in this action, dated the —— day of ——, 187—.

2. I have, in the first part of the said account marked A., set forth a full, true, and particular account of all sums of money which have become due to me for principal money and interest upon and by virtue of my mortgage security dated the —— day of ——, 187—, in the said judgment mentioned.

3. I have, in the second part of the said account, set forth a full, true, and particular account of all sums of money paid, laid out, and expended by me in necessary repairs and lasting improvements on the hereditaments comprised in my said mortgage security, and the times when, the names of the persons to whom, and the purposes for which the same were made.

4. I have, in the third part of the said account, set forth a full, true, and particular account of all the rents and profits of the said mortgaged hereditaments which have come to my hands, or to the hands of any person or persons by my order, or for my use ; and the times when, the names of the persons from whom, on what account, and in respect of what part of the said hereditaments the same have been received, and the times when the same became due ; and also a like account of the disbursements, allowances, and payments made by me in respect of the said hereditaments, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which the same were made.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that save and except as appears in the said account marked A., I have not, nor has nor have any other person or persons by my order or for my use, received or got in any rents and profits of the said hereditaments, nor any money in respect thereof, or of the principal and interest due to me on my mortgage security as aforesaid ; and that the said account does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed as above stated ; and that I have not, nor has nor have any other person or persons by my order, or for my use, received any security or satisfaction whatsoever for the amount due to me on balance of the said account, or any part thereof, save and except the said mortgage security [*or as may be*].

(*p*) See Dan. Pr. 858, 1139.

(*q*) For form of account, see *post* No. 1047.

1047.
Account (A), referred to in No. 1046 (*r*).

In the High Court of Justice,
Chancery Division.

A.

[*Short title of the action, and reference to the record.*]
This account marked A. was produced and shown to the plaintiff A. B. [*or as may be*], and is the account referred to in his affidavit sworn this —— day of ——, 187—, before me [*&c. : see ante* No. 696].

FIRST PART.—PRINCIPAL AND INTEREST DUE.

18—, August 8. Amount of principal advanced this day	(A)	2000	0	0
18—, August 8. Four years' interest thereon at £5 per cent., less property tax .	(B)	393	6	8
Total of first part		£2,393	6	8

SECOND PART.—EXPENDITURE IN REPAIRS AND LASTING IMPROVEMENTS.

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed. £	s.	d.	Interest thereon at £5 per cent., computed to 8 August, 18—. £	s.	d.
	18—.								
1	Nov. 4. .	Thomas Carpenter . .	New barn at farm occupied by John James . . .	190	3	11			
			Interest . .	—	—	—	9	1	2
	18—.								
2	March 3 .	William Styles	Rebuilding part of house let to Reuben Marshall . . .	140	13	6			
			Interest . .	—	—	—	2	15	0
			Total laid out in repairs, &c. . . (F) £	330	17	5	11	16	2
			Add Interest . . (G)	11	16	2			
			Total of Second Part . . (H) £	342	13	7			

(*r*) See *ante* No. 1310, note (*q*). The letters A. B. F. G. H. K. L. and M. used in this form correspond to the like letters used in Nos. 1045, par. 1, and 1048.

THIRD PART.—RENTS AND PROFITS.

Receipts.

No. of item.	Date when received.	Names of persons from whom received.	On what account, and in respect of what part of the estate received, and when due.	Amount received. £ s. d.
	18—.			
1	Nov. 11.	John James .	Half year's rent of farm in parish of Ickleton, due Michaelmas last, less income tax .	296 5 0
2	,, 25.	Thomas Jones	One quarter's rent of house at Chesterford, due same time .	10 0 0
	18—.			
3	May 1.	John James .	Same as No. 1, due Lady Day last . .	296 5 0
4	June 3.	Thomas Jones	Same as No. 2, due Lady Day last . .	10 0 0
			(K) £	612 10 0

Disbursements.

No. of item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed. £ s. d.
	18—.			
1	Jan. 1.	Isaac Thompson	One year's rent charge, due Christmas last . . .	15 0 0
2	,, 16.	James Francis .	Land Tax, due ditto . . .	6 3 9
	18—.			
3	Jan. 5.	Isaac Thompson	Same as No. 1, due Christmas last . .	15 0 0
			(L) £	36 3 9
			Balance (M) . .	576 6 3
			£	612 10 0

1048.

Chief Clerk's certificate of the result of the account (*s*).

[*Proceed as in* No. 1045 *ante, to the end of paragraph* 1.]

2. The plaintiff [*or as may be*] has laid out sums to the amount of £F., in necessary repairs and lasting improvements on the hereditaments comprised in his said mortgage security. Interest has been computed on the said sums, from the respective times when the same were so laid out to the date of this certificate, and at the rate of £C. per cent. per annum, being the same rate of interest as the said mortgage carries, and such interest (less property tax) amounts to £G. The said sums of £F. and £G. make together the sum of £H. The particulars of the sums so laid out appear in the second part of the account marked A., verified by the affidavit of the plaintiff [*or as may be*] filed ——, 187—, and which account is to be filed with this certificate [*Or if the account has been varied, explain in what respect; see post* No. 1238].

The evidence produced, *&c.*

The said sums of £E. and £H. make together the sum of £I.

3. The plaintiff [*or as may be*] has received rents and profits of the mortgaged hereditaments to the amount of £K.; and he has paid, or is entitled to be allowed, on account thereof sums to the

(*s*) See Dan. Pr. 858, 1139. As to the fee payable on taking the account, see note (*z*) at p. 551 *ante*.

amount of £L. : leaving a balance due from him of £M. on that account. The particulars of such receipts and payments appear in the third part of the said account marked A. [*Explain any variations ; see post* No. 1238].

The evidence produced, *&c.*

The said sum of £M. being deducted from the said £I. leaves a balance due to the plaintiff [*or as may be*] of £N.

There will also be due to the plaintiff [*or as may be*] on the —— day of ——, 187— : being the expiration of six calendar months (*t*) from the date of this certificate : the further sum of £O., for half a year's interest (less property tax), at the rate aforesaid, to the said —— day of ——, 187—, on the sum of £P., part of the said sum of £N. [*or as may be*]: which sums make together the sum of £Q.

(Monday), the —— day of ——, 187—, between the hours of twelve and one of the clock in the afternoon, and the Chapel of the Rolls in the Rolls' Yard, Chancery Lane, London, are appointed as the time and place at which the defendant C. D. is to pay the said sum of £Q. to the plaintiff A. B. [*or as may be*].

1049. Notice of motion or summons to enlarge time for payment, in a foreclosure suit (*u*).

Formal parts : see post No. 1571, *or ante* No. 881.

on the part of the defendant A. B. :

1. That, upon payment by him to the plaintiff of the plaintiff's costs of this application : to be taxed : and upon payment by him to the plaintiff, on or before the —— day of ——, 187—, of the sums of £—— and £——, by the Chief Clerk's certificate, dated the ——, 187—, certified to be due to the plaintiff for interest in respect of his mortgage security therein mentioned, and for his costs of this action, the time for the defendant to redeem the hereditaments comprised in the said mortgage may be enlarged for six calendar months.

2. That upon the aforesaid payments being made, subsequent interest may be computed on the principal money due to the plaintiff on his said security, and his subsequent costs of this action be taxed ;

[*If so :*] and the account of rents directed by the judgment dated the —— day of ——, 187—, be continued, and the balance dealt with in the manner therein mentioned ;

and the amount due to the plaintiff certified ; and a new time and place appointed for the payment thereof to him by the defendant.

3. That in default of such payment, the defendant may be foreclosed.

(*t*) See Dan. Pr. 858, note (*l*).

(*u*) *Ibid.*, 860, 1139. For order in like case, see Seton, ed. 3, 390, No. 1.

1050.

Notice of motion or summons by the mortgagee, for a new time to be fixed, where he failed to attend at the time appointed for payment (*x*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the plaintiff:

1. That the time for the defendant to redeem the hereditaments in the judgment dated the —— day of ——, 187—, and Chief Clerk's certificate dated the —— day of ——, 187—, respectively mentioned, may be enlarged until the —— day of ——, 187—.

2. That the said —— day of ——, 187—, between the hours of twelve and one of the clock in the afternoon, and the Chapel of the Rolls, in the Rolls' Yard, Chancery Lane, London, may be appointed as the time and place at which the defendant is to pay to the plaintiff the sum of £——, in the said Chief Clerk's certificate mentioned.

1051.

Notice of motion or summons to continue the account, where the mortgagee has received rents between the certificate and the time appointed for payment (*y*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the plaintiff:

1. That subsequent interest may be computed on the principal money due to the plaintiff on his mortgage security in the judgment dated the —— day of ——, 187—, and Chief Clerk's certificate dated the —— day of ——, 187—, respectively mentioned; and that his subsequent costs of this action may be taxed.

2. That the account of rents directed to be taken by the said judgment may be continued, and the balance dealt with in the manner in the said judgment mentioned.

3. That the amount due to the plaintiff for principal, interest, and costs may be certified.

4. That in lieu of the time and amount mentioned in the said Chief Clerk's certificate, a new time may be appointed for the defendant to attend at the Chapel of the Rolls, and pay to the plaintiff the amount which shall be so certified to be due to him.

1052.

Power of attorney to attend and receive money certified to be due to a mortgagee (*z*).

In the High Court of Justice,

Chancery Division.

[*Title of the action, and reference to the record.*]

I, A. B., of [*residence and addition*], the above-named plaintiff [*or as may be*], hereby appoint E. F., of [*residence and addition*], and G. H., of, *&c.*, jointly and severally, my attorneys, and attorney, to attend on the —— day of ——, 187— [*Day fixed for payment*], at the Chapel of the Rolls, in the Rolls' Yard, Chancery Lane, London, and then and there, in my name, and on my behalf, to receive from the above-named defendant C. D. [*or as may be*], the sum of £——, in the Chief Clerk's certificate made in this action dated the —— day of ——, 187—, mentioned, and appearing thereby to be payable to me at the time and place aforesaid. And on receipt of the said sum, for me, and in my name, or in the

(*x*) See Dan. Pr. 859. For order in like case, see Seton, ed. 3, 391, No. 2.

(*y*) See Dan. Pr. 860, 1139; and see *Pearce* v. *Spencer*, M. R. at Chambers, 30 July, 1862, Reg. Lib. B. 1646.

(*z*) See Dan. Pr. 858.

names or name of my said attorneys or attorney, to give, sign, seal and deliver a valid release and discharge for the same, and a reconveyance of the hereditaments comprised in my mortgage security in the said Chief Clerk's certificate mentioned: free and clear of and from all incumbrances done by me, or any person claiming by, from, or under me (*a*). And I hereby agree to ratify and confirm whatsoever my said attorneys or attorney shall lawfully do, or cause to be done, in or about the premises, by virtue hereof. In witness whereof I have hereunto set my hand and seal this —— day of ——, 187—.

Signed, sealed, and delivered by the above-named A. B. in the presence of, } A. B. (Seal).

L. M., of [*residence and addition*].

1053. Motion paper for final order in a foreclosure or redemption action, on default in payment (*b*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*Or*, defendant]

[*In a foreclosure action, add:*]

for a final order of foreclosure against the defendant;

[*In a redemption action, add:*]

that this action may stand dismissed with costs;

the defendant [*Or*, plaintiff] having made default in payment of the redemption money mentioned in the Chief Clerk's certificate dated the —— day of ——, 187—.

The judgment, and Chief Clerk's certificate, and an affidavit of default, accompany.

1054. Affidavit in support, where the mortgagee attended in person (*c*).

Formal parts: see ante No. 693.

1. On the —— day of ——, 187—, I personally attended and waited at the Chapel of the Rolls (*d*), in the Rolls' Yard, Chancery Lane, London, from before the hour of twelve of the clock at noon until after the hour of one of the clock in the afternoon of that day (*e*): being the place and time appointed by the Chief Clerk's

(*a*) Follow the words of the judgment.

(*b*) See Dan. Pr. 858, 1139. For order in like case, see *Kidder* v. *Proudfoot*, V.-C. K., 22 May, 1866, Reg. Lib. A. 1055; and see Seton, ed. 3, 393. For order dismissing action, on default in payment of redemption money, see Seton, ed. 3, 466. As to the course where the judgment directs a sale, instead of a foreclosure, on default, see Dan. Pr. 1139, 1148—1187; 15 & 16 Vict. c. 86, s. 48.

(*c*) See Dan. Pr. 858.

(*d*) The attendance takes place in the vestry room, on the south side of the chapel. A fee of 5*s*. is payable on an attendance to receive mortgage money, and a fee of 10*s*. 6*d*. on payment of mortgage money.

(*e*) As to the effect of a partial attendance only, during the hour, see Dan. Pr. 859.

certificate made in this action, and dated the —— day of ——, 187—: for the purpose of receiving from the above-named defendant C. D. [*or as may be*], the sum of £——, in the said Chief Clerk's certificate mentioned.

2. The defendant C. D. did not, nor did any person or persons on his account or behalf, attend at the place and time aforesaid, to pay me the said sum of £——, or any part thereof (*f*).

3. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor has nor have any other person or persons by my order or for my use, received the said sum of £——, or any part thereof; but that the whole of the said sum still remains due and owing to me.

1055.

Affidavit in support, where the mortgagee attended by attorney (*g*).

In the High Court of Justice,
Chancery Division.

[*Title of the action, and reference to the record.*]

We, A. B., of [*residence and addition*], the above-named plaintiff [*or as may be*], and E. F., of [*&c. : as in the power*], severally make oath and say :

First I, the said A. B. for myself say as follows :

1. The signature "——" to the paper writing marked A., now produced and shown to me (*h*), and purporting to be a power of attorney, dated the —— day of ——, 187—, from me to the deponent E. F., and to G. H., is of my proper handwriting. The said paper writing was executed by me on the —— day of ——, 187—.

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, say, that I have not, nor has nor have any other person or persons by my order or for my

(*f*) At the expiration of the time appointed, the person attending makes and signs, in a book kept for the purpose in the vestry room of the chapel, an entry, to the following effect : [*Date, and title of the action*]. I, A. B., of [*residence and addition*], the above-named plaintiff [*Or*, I, E. F., of [*residence and addition*], by virtue of a power of attorney from the above-named plaintiff], do hereby certify, that I attended at the Chapel of the Rolls, Rolls' Yard, Chancery Lane, London, from before the hour of twelve of the clock at noon until after the hour of one of the clock in the afternoon of (Monday), the —— day of ——, 187— : being the time and place appointed by the Chief Clerk's certificate dated the —— day of ——, 187—, made in this action, in pursuance of the judgment [*Or*, order] dated the —— day of ——, 187— : for the purpose of receiving the sum of £—— from the above-named defendant C. D.; but the said defendant did not, nor did any person or persons on his behalf, attend to pay the same, or any part thereof. Dated this —— day of ——, 187—.

[*Signature.*]

(*g*) See Dan. Pr. 858 ; and notes to No. 1054 *ante*.

(*h*) Exhibit the power. For form of memorandum of exhibit, see *ante* No. 723.

use, received the sum of £——, in the Chief Clerk's certificate made in this action, and dated the —— day of ——, 187—, mentioned, and thereby appointed to be paid to me by the above-named defendant C. D. [*or as may be*] on the —— day of ——, 187—, or any part thereof; but that the whole of the said sum of £—— remains due to me.

And I the said E. F. for myself say as follows:

3. Under the authority contained in the paper writing marked A., now produced and shown to me (*i*), and being the power of attorney hereinbefore mentioned, I, as the attorney of the said plaintiff [*or as may be*], did, on the —— day of ——, 187—, personally attend and wait at the Chapel of the Rolls, in the Rolls' Yard, Chancery Lane, London, from before the hour of twelve of the clock at noon until after the hour of one of the clock in the afternoon of that day: being the place and time appointed by the said Chief Clerk's certificate, dated the —— day of ——, 187—, for the purpose of receiving from the above-named defendant C. D. [*or as may be*], the sum of £——, in the said paper writing marked A., and Chief Clerk's certificate, respectively mentioned; and that the defendant C. D. did not, nor did any person or persons on his behalf, attend at the place and time aforesaid to pay to the plaintiff A. B., or to me, as his attorney, the said sum of £——, or any part thereof; and I did not in fact then receive, and have not since received, the said sum of £——, or any part thereof.

(14.) *Partnership Suits.*

1056. Affidavit by an accountant, of the result of his investigation of partnership accounts (*l*).

Formal parts: see ante No. 693.

1. In consequence of instructions received by me from Messrs. A. and B., the solicitors in this action for the plaintiff [*or as may be*], I have carefully examined all the books and accounts of the plaintiff and defendant as co-partners in the business or trade of cotton spinners and manufacturers at R., in the county of L., from the —— day of ——, 187—, when the said partnership commenced, until the —— day of ——, 187—, when the said partnership was dissolved.

2. I have, in the book marked A., now produced and shown to me (*m*), set out the particulars and results of my investigation aforesaid, and the accounts of all the dealings and transactions between the plaintiff and the defendant in the said business of cotton spinners

(*i*) Exhibit the power. For form of memorandum of exhibit, see *ante* No. 723.

(*l*) As to partnership accounts, and the employment of accountants to make out the same, see Dan. Pr. 1121, note (*c*), 1140. As to obtaining scientific assistance at Chambers, see *Ibid.*, 846, 1048; and for forms of letter of instructions, and affidavit verifying report, in like case, see *ante* Nos. 942, 943. As to referring the account to a referee, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57; *post* Nos. 1908, 1909; and for order in like case, see *Ormond* v. *Townsend*, M. R., 16 Dec. 1875, Reg. Lib. B. 2099.

(*m*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

and manufacturers directed to be taken by the judgment in this action, dated the —— day of ——, 187—.

3. To the best of my knowledge, information, and belief, the said book marked A. contains a true and accurate account of all the said dealings and transactions, and of the result of my said investigation of the said partnership books and accounts.

1057. Chief Clerk's certificate of the result of partnership accounts (*n*).

Formal parts: see post No. 1238.

I have taken an account of the partnership dealings and transactions between the plaintiff and the defendant, from the 12th March, 1855: having regard to the partnership articles, and the agreement of dissolution, in the pleadings mentioned.

On such account there was due from the said partnership to the plaintiff, on the 25th December, 1862, being the date of the dissolution of the said partnership, the sum of £A. in respect of his capital in the said partnership; and which sum of £A. is still due to the plaintiff, together with £B. for interest thereon at the rate of £5 per cent. per annum from the last-mentioned day to the date of this certificate: making together £C.

On the same account there was due from the said partnership to the defendant on the said 25th December, 1862, the sum of £D. in respect of his capital in the said partnership: and the account of the defendant has been debited with £E. in respect of the trade stock of the partnership, and the horses, carts, trucks, and other plant and fixtures belonging to the said partnership, taken by him pursuant to the said agreement of dissolution: whereby the said £D. has been reduced to £F.: which sum of £F. is still due to the defendant, together with £G. for interest thereon at the rate aforesaid from the said 25th December, 1862, to the date of this certificate: making together £H.

The defendant has, since the dissolution of the said partnership, received in respect of the assets of the said partnership, other than the said £E. with which his account has been debited as aforesaid, sums to the amount of £I.; and he has paid, or is entitled to be allowed, on account thereof, sums to the amount of £K.: leaving a balance due from him of £L. on that account.

The particulars of the above receipts and payments appear in the "Realisation Account," at page 2 of the account, marked A., verified by the affidavit of the defendant filed the 5th May, 1865; and which account is to be filed with this certificate: except that, in addition to the sums appearing in such account to have been realised by the defendant, he has been charged with £M. received by him of A. B., in respect of the assets of the said partnership since the said 5th May, 1865; and except that I have not allowed the defendant the sum of £N. retained by him on the 28th February, 1865, on account of his capital in the said partnership:

(*n*) Adapted from the certificate in *Wood* v. *Scales*, L. R. 1 Ch. 369, 374; and see Dan. Pr. 1140. As to the fee payable on taking the account, see note (*z*) at p. 551 *ante*.

reserving to the Court the application of the partnership assets realised by the defendant since the dissolution of the said partnership; and except that I have deducted from the item of £O. on the debit side of the said "Realisation Account" the sum of £P.: whereby the said item is reduced to £Q.: and except that, in addition to the disbursements appearing in the said "Realisation Account," the defendant has been allowed £R. paid by him into Court to the credit of this action, on the 28th February, 1865, pursuant to the said judgment.

Notwithstanding the foregoing certificate of the result of the said account, the question whether the account of the defendant ought to have been debited with the said £E. is, at the request of the plaintiff, reserved for the consideration of the Court.

The assets of the said partnership now remaining outstanding or undisposed of consist of the particulars set forth in the schedule hereto.

The evidence produced, *&c.*

(15.) *Management of Property* (*o*).

1058. Summons for leave to institute an action (*p*).

Formal parts: see ante No. 881.

on the part of the plaintiffs [*Or*, defendants, A. B. and C. D.; *or as may be*], the trustees [*Or*, executors] of the will of E. F., the testator

Or, the administrators of the estate and effects of E. F., the intestate

in the pleadings named [*or as may be*]:

1. That they may be at liberty to institute and prosecute an action

Or, to take proceedings in the proper County Court; *or as may be;*

against all proper parties, for the purpose of [*State, shortly, the object; as thus:*]

compelling a foreclosure or sale of the hereditaments comprised in the mortgage security for £500

Or, recovering a debt of £500 due

from G. H., and now forming part of the outstanding estate of the said E. F.

2. That the applicants may be indemnified, in such manner as the Judge shall direct, against any costs to be incurred by them in such action [*Or*, proceedings], out of the estate of the said E. F. (*q*).

(*o*) See generally, Dan. Pr. 1040, 1140—1142; and as to infants, *Ibid.*, 1204—1206. As to the effect of the pendency of an action on the exercise by trustees of discretionary powers, see *Ibid.*, 1140.

(*p*) See Dan. Pr. 1141. As to the proper person to have the conduct of the suit, see *Harrison* v. *Richards*, L. R. 1 Ch. 473; 12 Jur. N. S. 871, L.JJ. For form of order, see Seton, ed. 4, 488, No. 6.

(*q*) See *Dawson* v. *Clark*, V.-C. S. at Chambers, 12 Jan. 1864, Reg. Lib. A. 38; and see *Re Eden*, *Eden* v. *Sutton*, V.-C. H. at Chambers, 7 Nov. 1876, Reg. Lib. A. 1777; Seton, ed. 4, 488, No. 7.

1059.

Summons for leave to defend an action (*s*).

Commence as in No. 1058 *ante.*

1. That they may be at liberty to defend an action commenced against them in the ——— Division of this honourable Court [*or, as may be*] by L. M., for the purpose of [*State, shortly, what; as thus:*]

compelling a foreclosure or sale of the hereditaments comprised in the mortgage security for £500 to the said L. M.: the equity of redemption whereof forms part of the estate of the said E. F.;

and the short title of which action is Murray *v.* Brown, 187—, M. 1.

2. That the applicants may be indemnified [*Conclude as in* No. 1058 *ante*].

1060.

Summons for leave to convert outstanding estate (*u*).

Commence as in No. 1058 *ante.*

that they may be at liberty to sell the £5,000 Russian £5 per cent. stock [*or as may be*], forming part of the outstanding estate of the said E. F.; and that the proceeds of such sale may be paid by the applicants, within ten days after the receipt thereof, into Court, to the credit of this action, Brown *v.* Jones (187—, B. 90), "The personal estate account;" and be invested in consolidated £3 per cent. annuities; and that the dividends to accrue on such annuities may be from time to time invested in like annuities [*or as may be*].

1061.

Summons for leave to carry on testator's business (*v*).

Commence as in No. 1058 *ante.*

that the applicants may be at liberty to carry on the testator's business of a ——, at ——, until the sale thereof, or until the —— day of ——, next; and to use and employ for that purpose any part of the sum of £——, now in their hands, and forming part of the testator's personal estate.

1062.

Summons for leave to pay debts (*x*).

Commence as in No. 1058 *ante.*

that the applicants may be at liberty, out of the assets of the said E. F. in their hands, to pay the debts of the said E. F. specified in the schedule to the Chief Clerk's separate certificate, dated the ——, 187—.

Or, in the exhibit marked A. to the affidavit of the applicants, filed ——, 187—; *or as may be.*

(*s*) See Dan. Pr. 1141. For order in like case, see *Dawson* v. *Clark*, V.-C. S. at Chambers, 12 Jan. 1864, Reg. Lib. A. 38; *Re Eden, Eden* v. *Sutton*, V.-C. H. at Chambers, 7 Nov. 1876, Reg. Lib. A. 1777; Seton, ed. 4, 488, No. 7.

(*u*) See Dan. Pr. 1141. For various forms of orders relating to outstanding estate or securities, see Seton, ed. 3, 189—191.

(*v*) See Dan. Pr. 1141. For order in like case, see *Re Berry, Nicholson* v. *Norman*, M. R. at Chambers, 31 July, 1866, Reg. Lib. A. 2060.

(*x*) See Dan. Pr. 1141.

1063.
Summons for leave to compromise an action or claim (*y*).

Commence as in No. 1058 *ante*.
that the applicants may be at liberty to compromise the action of "Brown *v.* Jones," instituted by [*Or*, against] them, in the —— division of this honourable Court, against [*Or*, by] [*State whom*], for [*State, shortly, the object of the action*],
Or, to compromise the debt due by [*Or*, to] G. H. to [*Or*, from] the estate of the said E. F.,
upon the terms following; namely: [*State them*].

1064.
Summons for leave to execute repairs or drainage works (*z*).

Commence as in No. 1058 *ante*.
that the applicants may be at liberty to lay out sums of money not exceeding the respective sums set forth in the second column of the schedule hereto, in effecting the repairs [*Or*, works of drainage] and improvements specified in the affidavit of A. B., filed the ——, 187—, and in the exhibits thereto, to those portions of the estates of the testator E. F., situate at ——, in the county of ——, which are now in the occupation of the respective persons whose names are set forth in the first column of the said schedule; and may be allowed what they shall so lay out on passing their accounts in this action.

The schedule above referred to.

Names of occupiers.	Estimated amount to be laid out.		
	£	*s.*	*d.*
Peter Brice	209	8	6
John Witham	80	4	11
Benjamin Scholefield	137	11	3
	427	4	8

(*y*) See Dan. Pr. 1141.
(*z*) *Ibid.* For order in like case, see *Holden* v. *Holden*, V.-C. W. at Chambers, 1 Feb. 1864, Reg. Lib. A. 209; and see Seton, ed. 4, 487, No. 4.

1065.

Summons for leave to protect testator's estate, on an application to Parliament (*a*).

Commence as in No. 1058 *ante.*

that the applicants may be at liberty to take such proceedings as they may be advised, to protect the testator's estate, and the interests of the parties interested therein, on the intended application to Parliament by the G. E. R. Company, for an Act to carry out their undertaking. And that the applicants may be indemnified [*Conclude as in* No. 1058 *ante.*]

1066.

Summons for leave to present a clerk to an ecclesiastical benefice (*b*).

Commence as in No. 1058 *ante.*

that the applicants, as patrons or proprietors of the advowson of the rectory and parish church [*or as may be*] of ——, now vacant by the death [*or as may be*] of the Reverend A. B., may be at liberty to present the Reverend C. D., of [*residence*], Clerk in Holy Orders, to the Lord Bishop of London [*or as may be*], for institution to the said rectory and parish church.

1067.

Summons to confirm agreements for enfranchisement (*c*).

Commence as in No. 1058 *ante.*

that the (six) several agreements, of the respective dates set forth in the first column of the schedule hereto, and respectively entered into by A. B. on behalf of the applicants, the trustees, of the first part, and the defendant C. D. of the second part, with the several persons of the third part whose names are set forth in the second column of the said schedule, opposite the said respective dates, for the enfranchisement of the premises in the said agreements respectively described, at the prices set forth in the third column of the said schedule, may be respectively carried into effect.

. . . . . .

The schedule above referred to.

Date of agreement.	Name of the purchaser.	Price of enfranchisement.		
		£	*s.*	*d.*
31 March, 187—, &c.	John Jones . . . . &c.	208	3	1

(*a*) For order in like case, see *Cust* v. *Middleton*, M. R. at Chambers, 18 Jan. 1864, Reg. Lib. A. 109.

(*b*) For order in like case, see *Honywood* v. *Honywood*, M. R. at Chambers, 8 Aug. 1866, Reg. Lib. A. 2066.

(*c*) See Dan. Pr. 1141. For order in like case, see *Fox* v. *Earl Amherst*, V.-C. S. at Chambers, 9 June, 1866, Reg. Lib. A. 1599.

1068.
Summons for leave to take admission to copyholds (*d*).

Commence as in No. 1058 *ante.*
that the applicants may be at liberty to take admission to the copyhold tenements which E. F., the testator in this action, held of the manor of B., at the time of his death ; and to pay the fine and fees incident to such admission out of the assets of the said E. F. in their hands [*or as may be*].

1069.
Summons for leave to obtain a renewal of a lease (*e*).

Commence as in No. 1058 *ante.*
that the applicants may be at liberty to accept from G. H. a renewal, for the term of —— years from Michaelmas next, at the annual rent of £——, of the lease dated the ——, 187—, of the Manor Farm at B., in the county of C., now forming part of the outstanding estate of the said E. F. : such lease to be granted to the applicants as executors of the will of the said E. F.

— — —

1070.
Summons to approve of an agreement to grant a lease (*f*).

Commence as in No. 1058 *ante.*
that the conditional contract dated the —— day of ——, 187—, entered into by the applicants
Or, by G. H., as the agent for, and on behalf of, the applicants
to grant to L. M. a lease of the Manor Farm at B., in the county of C. [*or as may be*], part of the trust estate of the testator E. F., on the terms and conditions therein mentioned, may be directed to be carried into effect : such lease to be approved by the Judge [*or as may be*].

1071.
Affidavit in support (*g*).

In the High Court of Justice,
Chancery Division.
[*Title of the action, and reference to the record.*]
We, G. H., of [*residence and addition*], and J. K., of, *&c.*, severally make oath and say :
First, I the said G. H., for myself, say as follows :
1. I have, for —— years last past, carried on the business of a

(*d*) See Dan. Pr. 1141 ; and Seton, ed. 3, 513—521.
(*e*) See Dan. Pr. 1141.
(*f*) See Dan. Pr. 1141 ; Seton, ed. 4, 487, No. 5.
(*g*) See Dan. Pr. 1142.

surveyor, auctioneer, and land and estate agent at ——, in the county of —— ; and I am well acquainted with the value, management and letting of land and house property in the neighbourhood of the farm hereinafter mentioned.

2. I am well acquainted with the farm and premises described or referred to in the agreement dated the —— day of ——, 187—, made between [*Describe the parties*], and now produced and shown to me, and marked A. (*h*).

3. I was recently employed by the plaintiffs [*or as may be*] to obtain a tenant for the said farm and premises, and to negotiate the letting thereof.

4. Having well considered the value of the said farm and premises, I am of opinion that the rent of £——, in the said agreement mentioned, is the best rent that can reasonably be obtained for the said premises ; and that the terms and conditions of the said agreement in other respects

[*If a draft lease has also been approved, add :*] and of the draft lease referred to in the said agreement, and now also produced and shown to me, and marked B. (*h*),

are fair and reasonable, and such as are usually inserted in leases of property of the same nature ; and in my judgment and opinion it will be beneficial to the estate of the testator E. F. [*or as may be*] that the said agreement should be carried into effect.

5. I have made inquiries as to the position and means of the said L. M. [*tenant*], and as to his ability to pay the rent and perform the covenants and agreements on his part contained in the said agreement, and to be contained in the lease to be granted in pursuance thereof. From information derived by me in prosecuting such inquiries, I am of opinion that the said L. M. is fully able to pay the said rent and perform the said covenants and agreements ; and that he is in all respects a desirable tenant for the said premises.

And I, the said J. K., for myself say, that the signature "——" set and subscribed to the agreement dated the —— day of ——, 187—, now produced and shown to me, and marked A. (*h*), is of the proper handwriting of the said L. M., one of the parties thereto : as I know from having seen him subscribe such signature thereto.

Sworn [*&c. : see ante* No. 696 *or* 698].

1072.

Summons to settle draft lease (*j*).

[*See ante* No. 968.]

(*h*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 742.

(*j*) See Dan. Pr. 1142.

1073. Affidavit of examination of engrossments of lease and counterpart (*j*).

Formal parts: see ante No. 693.

1. I have carefully examined and compared each of the two parchment writings now respectively produced and shown to me, and marked respectively A. and B. (*k*), with the draft or paper writing now produced and shown to me, and marked C. (*k*): being the draft of the lease settled at the Chambers of the Judge to whom this action [*Or*, matter] is attached.

[*If so, add:*] pursuant to the order made therein, dated the —— day of ——, 187—.

2. Each of the said parchment writings is a true and correct transcript and engrossment of the said draft.

1074. Memorandum of allowance, or identity (*j*).

——, 187—.

[*Short title.*]

The Master of the Rolls [*Or*, Vice-Chancellor ——] has settled and approved this indenture.

Or, This is the indenture of lease [*Or*, counterpart of the indenture of lease] referred to in my certificate [*Or*, in the order] made in this action [*Or*, matter], dated the —— day of ——, 187—.

R. M., Chief Clerk.

1075. Chief Clerk's certificate of settlement of lease (*j*).

Formal parts: see post No. 1238.

A proper lease to be granted to L. M., in the order dated the —— day of ——, 187—, named, pursuant to the agreement dated the —— day of ——, 187—, therein mentioned, has been settled: consisting of an indenture intended to be made between [*State whom: as in the lease*].

The said indenture and a counterpart thereof are respectively identified by my signature in the margin of the engrossments thereof respectively.

The evidence produced, *&c.*

1076. Minute of order approving an agreement, and the lease to be granted in pursuance thereof (*j*).

[*Date, title, parties appearing, and evidence.*]

Order made: that the (within mentioned) conditional agreement dated, *&c.*, be carried into effect. And that the plaintiffs [*or as may be*] do execute the indenture of lease, marked A., intended to be made between [*Describe whom*], which has been settled and approved by the Judge as a proper lease to be granted in conformity with the said agreement; and which lease and a counterpart thereof are respectively indentified by the signature of

(*j*) See Dan Pr. 1142.

(*k*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

the Chief Clerk in the margin of the engrossments thereof. And that the said counterpart be executed by the said L. M., the lessee. [*Add any direction given as to costs.*]

(16.) *Raising Money by Sale or Mortgage* (*l*).

1077. Order on further consideration to raise deficiency of personalty, by sale or mortgage of realty (*m*).

[*Date, title, and introduction.*]

It appearing by the Chief Clerk's certificate dated, *&c.*, that the personal estate of the testator A. B. is insufficient for the payment of his debts, and funeral expenses, and the costs of this action [*or as may be*], it is ordered that the costs of the plaintiff and defendant of this action, including in the defendant's costs any charges and expenses properly incurred by him as executor of the testator, be taxed by the Taxing Master, as between solicitor and client. And that subsequent interest be computed on the debts of the testator mentioned in the first schedule to the said Chief Clerk's certificate. And that a sufficient sum to make good the deficiency of the personal estate to pay what shall be due in respect of such debts, interest, and costs, be raised by mortgage or sale of the testator's real estate specified in the second schedule to the said certificate, or of a competent part thereof, with the approbation of the Judge.

And that the money so to be raised be applied in payment of the said costs to the solicitors of the parties, respectively; and in payment of the amounts which shall be certified to be due to them, in respect of their said debts and interest respectively, to the several creditors of the testator, or to the legal personal representatives of such of them as may be dead.

And that, in case such money shall be directed to be raised by mortgage, such mortgage be settled by the Judge; and be executed by all necessary parties as he shall direct. And that the plaintiff, the tenant for life of the said estate [*or as may be*], do keep down the interest of such mortgage. And that such money be paid into Court, to the credit of this action, B. *v.* D., 187—, B., No. ——, "Proceeds of mortgage of testator's real estate." And that upon the due execution of such mortgage: such execution to be certified: the said debts, interest, and costs be paid out of such money, in manner aforesaid to the persons who shall be certified to be entitled to receive the same.

But in case such money shall be directed to be raised by sale, the proceeds of such sale be paid into Court, to the credit of this action, B. *v.* D., 187—, B. No. ——, "Proceeds of sale of testator's real estate." And any of the parties are to be at liberty to apply in Chambers for the application thereof, as they may be advised.

(*l*) For the practice on this subject, see Dan. Pr. 1142—1144.

(*m*) See *Ibid.* 1142. For order in like case, see Seton, ed. 3, 245, No. 12. For the mode of working out the order, see Dan. Pr. 1142—1144; Seton, ed. 3, 246.

1078.
Statement of the amount to be raised (*n*).

In the High Court of Justice,
Chancery Division.

[*Short title, and reference to the record.*]

Statement of the amount to be raised by sale or mortgage of the testator's real estate, pursuant to the order dated the —— day of ——, 187—.

The liabilities to be provided for, pursuant to the said order, consist of:

	£	s.	d.
1. The testator's debts and interest, as certified by the Chief Clerk's certificate, dated ——, 187—.	4,379	5	10
2. Subsequent interest on the debts, say . .	109	0	0
3. Costs of the plaintiffs and defendants of this action (*o*)	203	11	5
	£4,691	17	3

The personal estate of the testator applicable to the payment of the said liabilities consists of:

1. £2,360 11*s.* 8*d.* consolidated £3 per cent. annuities, in Court, on the credit of this action—now worth at 90⅛ per cent. . . .	£2,124	10	6	
2. Cash in Court on the like credit	60	6	9	
				2,184 17 3
Leaving a deficiency, to be raised by sale or mortgage, of, say				£2,507 0 0

1079.
Summons for leave for intended mortgagee to pay his advance into Court (*p*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or other person having the conduct of the action; see ante* No. 968], that it appearing that the sum of £2,507 will be required to be raised to pay the amount due in respect of the debts, interest, and costs, by the order dated, *&c.*,

(*n*) See Dan. Pr. 1143.

(*o*) The costs of the intended mortgagee should be included in the costs of the plaintiff, or other party having the conduct of the cause; Dan. Pr. 1143, note (*y*).

(*p*) See Dan. Pr. 1143. For order in like case, see Seton, ed. 3, 245, No. 13. As to the course, when the money has to be raised by sale, see Dan. Pr. 1143. As to conveyances by infants, under 11 Geo. IV. & 1 Will. IV. c. 47, s. 12, on a sale or mortgage to pay the debts of a deceased person, and as to vesting orders under the Trustee Acts in like case, see Dan. Pr. 1143.

directed to be raised by sale or mortgage of the testator's real estate [*or as may be*], and that A. B., of [*residence and addition*], is willing to lend the said sum upon the security of the indenture of mortgage hereinafter mentioned of the said real estate, the said A. B. may be at liberty, on or before the —— day of ——, 187—, to pay the said £2,507 into Court, to the credit of [*&c., as in the order; see ante* No. 1077]; and that, upon such payment being made, the defendant G. H. may execute and deliver to the said A. B. the indenture intended to be made between [*set out names of parties, as in deed*], which has been settled by the Judge as a proper mortgage to be executed in pursuance of the said order, and is identified by the signature of the Chief Clerk in the margin of the engrossment thereof.

1080.

Recitals in mortgage of order to create same and of payment of mortgage money into Court (*q*).

[*After recitals of judgment, and Chief Clerk's certificate of deficiency of personalty*] And whereas by an order dated the —— day of ——, 187—, made in the said action, the costs of the plaintiffs and defendants of the said action were directed to be taxed; And it was ordered that subsequent interest [*&c.: Continue recital of order to raise deficiency: see ante* No. 1077]: And whereas by an order dated the —— day of ——, 187—, made in the said action (*r*), after premising that it appeared that the sum of £—— would be required to be raised to pay the amount due [*&c.: see ante* No. 1079, *to* of the said real estate], and that the Judge was of opinion that the said sum should be raised by mortgage, It was ordered that the said A. B. should be at liberty [*&c.: Continue as in* No. 1079, *to the end: substituting* the parties therein named, *for the names, &c., of the intended parties to the mortgage*], meaning thereby these presents and the signature in the margin hereof (*s*): And whereas in pursuance of, and in obedience to the last recited order, the said A. B., on the —— day of ——, paid the said sum of £—— into Court, to the credit of the said action: as appears by the receipt of one of the cashiers of the Bank, and by the certificate of the Paymaster-General, dated respectively the —— and —— days of ——, 187—: Now this indenture witnesseth that in consideration of the payment of the said sum of £—— by the said A. B. in manner aforesaid, *&c., &c.*

(*q*) See Dan. Pr. 1143.

(*r*) For form of summons to ground this order, see *ante* No. 1079.

(*s*) For forms of affidavit of examination of engrossment, and memorandum of approval, see *ante* Nos. 1017, 1018.

1081. Proviso restricting the exercise of a power of sale, where sanctioned in a mortgage approved at Chambers (*t*).

Provided always, that the power of sale hereinbefore contained shall not be exercised unless or until the sanction of the Judge to whom the said action of A. *v.* B. [*suit in which mortgage sanctioned*] shall for the time being be attached shall have been obtained to the exercise thereof.

1082. Proviso excluding the application of the 23 & 24 Vict. c. 145 (*u*) to a mortgage.

And it is hereby declared by the parties hereto, that none of the powers or incidents by the Statute of the 23rd and 24th years of the reign of Her present Majesty, cap. 145, conferred or annexed to particular offices, estates or circumstances, shall take effect or apply to this security.

Or, Provided always, and it is hereby declared, that none of the provisions of the Act of Parliament of the 23rd and 24th years of Queen Victoria, cap. 145, shall apply to the security hereby created.

Or, And it is hereby declared that the Act of the 23rd and 24th Victoria, cap. 145, shall not apply to these presents.

1083. Declaration applying the provisions of the above Act to a mortgage, but restricting the exercise thereof.

And it is hereby declared, that the said [*mortgagees*], and their assigns, and the survivor of them, his executors, administrators, and assigns, or any of them, shall and may have and exercise the power of sale and other powers given to mortgagees in the Act of the 23rd and 24th Victoria, cap. 145, and other the powers and remedies to which mortgagees are entitled: nevertheless, such power of sale shall not be exercised unless [*Continue as in* No. 1081 *ante*, *to* exercise thereof].

1084. Chief Clerk's certificate of computation of subsequent interest on debts (*y*).

Formal parts: see post No. 1238.

1. Subsequent interest has been computed on the debts of the testator mentioned in the first schedule to my certificate in this action dated the ——, 187—, at the rate of interest which such debts respectively carry, and from the date of the said certificate to the date of this certificate. The particulars of such subsequent interest are set forth in the fifth column of the schedule hereto, and such subsequent interest amounts to £——: which sum of £—— has been added to the respective amounts certified by my said certificate to be due; and which amounts are also specified in the fourth column of the schedule hereto. The total amount now due to each creditor is set forth in the sixth column of the schedule

(*t*) As to the insertion of a power of sale in a mortgage sanctioned by the Court, see *Russell* v. *Plaice*, 18 Beav. 21; *Selby* v. *Cooling*, 23 Beav. 418.

(*u*) Commonly called Lord Cranworth's Act.

(*y*) See Dan. Pr. 1143.

hereto; and such debts, interest, and costs, including such subsequent interest, now amount in the whole to the sum of £——.

The sum directed to be raised by sale or mortgage by the said order of the ——, 187—, has been raised by mortgage, with the approbation of the Judge. The sum so raised amounts to £——, and has, pursuant to an order dated the ——, 187—, been paid by A. B., the mortgagee, into Court, to the credit of *&c.*

The indenture of mortgage to the said A. B., in the said order of the ——, 187—, mentioned, has been executed by the defendant G. H., and delivered to the said A. B., as thereby directed.

The said £—— is, pursuant to the said order of the ——, 187—, to be applied in payment of the costs, amounting to £——, certified by the Taxing Master's certificate dated the ——, 187—, and in payment of the debts, interest, and costs amounting to £——, specified in the schedule hereto.

The evidence produced, *&c.*

The Schedule above referred to (*z*).

Serial number.	Names of the creditors.	Addresses.	Amounts certified to be due by the Chief Clerk's certificate, dated ——, 187—.	Subsequent interest.	Total amounts now due.

(17.) *Apportionment of Deficient Fund* (*a*).

1085. Affidavit verifying an apportionment of a fund in Court (*b*).

Formal parts: see ante No. 693.

1. I have apportioned [*Describe what: according to the order directing the apportionment to be made; as thus:*] the sum of £1,588 10*s.* cash, residue of the money arisen from the sale of the £2,000, consolidated £3 per cent. annuities in the order made in this action [*Or,* matter] dated the ——, 187—, mentioned, and of the dividends accrued thereon prior to such sale, which remains after payment thereout of the

(*z*) Insert the particulars from the former certificate, and in the same serial order.

(*a*) See Dan. Pr. 1144—1145; 32 & 33 Vict. c. 46; 38 & 39 Vict. c. 77, s. 10; *Re Williams, Williams* v. *Williams,* L. R. 15 Eq. 270.

(*b*) See Dan. Pr. 1145.

costs, and costs, charges, and expenses, by the said order directed to be so paid,

amongst [*State whom: according to the order; as thus:*] the several creditors [*Or*, legatees] in the Chief Clerk's certificate dated the ——, 187—, respectively named;

and in making such apportionment I have, according to the direction of the said order, computed and added to the amount by the said certificate certified to be due to each creditor [*Or*, legatee; *or as may be*], subsequent interest on his debt [*Or*, legacy] from the ——, 187—, to the ——, 187—, at the rate of interest which such debt [*Or*, legacy] carries.

2. The result of such apportionment and computation is set forth in the schedule hereto; and as so set forth is true and correct. The names of the said creditors [*Or*, legatees] respectively are set forth in the second column of the said schedule, and the amounts apportioned to them respectively are set forth in the sixth column of the said schedule, opposite their respective names.

The schedule above referred to (*c*).

Serial No.	Names of creditors [*Or*, legatees] (*d*).	Addresses.	Amounts before certified to be due, and subsequent interest.	Totals due.	Amounts apportioned.
			£ s. d.	£ s. d.	£ s. d.
1	John Jones .	20, Cheapside, London, Woollen-draper .	200 0 0		
		Subsequent interest . . .	17 10 0		
				217 10 0	57 4 8
2	Thomas Young and Robert Young	Braintree, in the county of Essex, executors of William Young, deceased . . .	200 0 0		
		Subsequent interest . . .	17 10 0		
				217 10 0	57 4 8
				Total . £	114 9 4

(*c*) For this form of schedule, see Regul. 8 Aug. 1857, Sched. No. 12.

(*d*) The names of the creditors or legatees are to be stated in the same order as in the Chief Clerk's certificate from which they are taken.

1086.
Statement of an apportionment to be certified by the Chief Clerk (*e*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]
Concise statement of the plaintiff [*or as may be*], as to the apportionment to be made pursuant to the order dated the ——, 187—.

	£	*s.*	*d*
Cash produced by sale of the £2,000, consolidated £3 per cent. annuities, directed to be sold by the said order	1,800	0	0
One year's dividend accrued thereon on 5th April, 187—, prior to such sale	58	10	0
	£1,858	10	0
Amount of plaintiff's taxed costs paid thereout, as directed by the said order . £150 0 0			
The like of defendant's costs . . 120 0 0			
	270	0	0
Balance to be apportioned . .	£1,588	10	0
Total amount by the Chief Clerk's certificate dated the ——, 187—, certified to be due to the several creditors [*Or*, legatees] . .	3,500	0	0
Subsequent interest on the debts [*Or*, legacies] from the date of the said certificate, to the ——, 187—	100	0	0
	£3,600	0	0

The said balance of £1,588 10*s.* 0*d.* is apportionable amongst the said several creditors [*Or*, legatees], pursuant to the said order, as follows:—

[*Set out the apportionment: see the schedule to* No. 1085 *ante.*]

1087.
Chief Clerk's certificate of the apportionment (*e*).

Formal parts: see post No. 1238.

Subsequent interest has been computed on the several debts [*Or*, legacies] certified by my certificate dated the ——, 187—, as directed by the said order.

The sum of £1,588 10*s.* 0*d.*: the residue of the money which arose from the sale of the £2,000 consolidated £3 per cent. annuities, by the said order directed to be sold, and of the dividends accrued prior to such sale, after payment thereout of £270, certified by the Taxing Master to be the total amount of the costs, and costs, charges, and expenses by the said order directed to be so paid: has been apportioned rateably amongst the several creditors [*Or*, legatees] named in the first schedule to my said certificate dated the ——, 187—. The names of the several

(*e*) See Dan. Pr. 1145.

creditors [*Or*, legatees] are set forth in the second column of the schedule hereto, and the amounts apportioned to them respectively are set forth in the sixth column of the said schedule, opposite their respective names.

The evidence produced, *&c.*

The schedule above referred to.

[*The same as the schedule to* No. 1085 *ante.*]

(18.) *Appointment of New Trustees* (*f*).

1088.
Affidavit of eligibility of proposed trustees (*g*).

Formal parts: see ante No. 693.

1. [*Show deponent's personal knowledge of the proposed trustees; as thus:*] I have for —— years last past, known and been well acquainted with E. F., of [*residence and addition*], and G. H., of [*residence and addition*], the persons proposed to be appointed new trustees of the will of A. B., late of [*residence and addition*], deceased, the testator in the judgment [*Or*, order] in this action [*Or*, matter], dated the —— day of ——, 187—, named.

Or, of the indenture of settlement, dated the —— day of ——, 187—, made on the marriage of A. B. with C. D., in the judgment, *&c.*, mentioned; *or as may be.*

2. [*Show the position in life of the proposed trustees, and their eligibility; as thus:*] The said E. F. has, for —— years last past, carried on business as a banker at ——, in the (county) of ——. The said G. H. has, for —— years last past, carried on business as a wine-merchant at ——, in the (county) of ——. During my aforesaid acquaintance with them I have had many opportunities of forming an opinion as to their habits of business and integrity. The said E. F. and G. H. respectively are persons in good credit in the neighbourhood in which they respectively carry on business as aforesaid, and are both men of business habits, and of strict honour and integrity.

3. In my judgment and opinion the said E. F. and G. H. are fit, proper, and eligible persons to be appointed new trustees of the said will [*Or*, indenture of settlement; *or as may be*].

1089.
Consent to act of proposed trustees (*g*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

We, the undersigned E. F., of [*residence and addition*], and

(*f*) As to the appointment of new trustees, and vesting the trust estate, see Dan. Pr. 1145, 1146; Seton, ed. 4, 500—502. For form of order appointing new trustees, and directing the retiring trustees to convey or assign the trust estate, see Seton, ed. 4, 499, No. 1; and see *Ibid.* 500, No. 2. As to the appointment of new trustees, and vesting the trust estate, under the Trustee Acts, see *post* note (*a*) at p. 1170, and No. 2190.

(*g*) See Dan. Pr. 1146.

G. H., of [*residence and addition*], do hereby testify our consent to accept the office of trustees, and to act in the trusts of the will of A. B., late of [*&c.; as in* No. 1088 *ante*]: in case this Court shall think fit to appoint us to that office. Dated this —— day of ——, 187—.

E. F.
G. H.

Signed by the said E. F. and G. H. in the presence of,
J. K., of [*residence and addition*].

1090. Affidavit, verifying the signatures thereto (*h*).

Formal parts: see ante No. 693.

1. The signatures "——," and "——," respectively set and subscribed to the paper writing marked A., hereunto annexed (*i*),

Or, now produced and shown to me,

purporting to be the consent, dated the —— day of ——, 187—, of E. F. and G. H., to accept the office of trustees of the will of A. B. [*or as may be*], are of the respective proper handwritings of the said E. F. and G. H., in such paper writing respectively named and described: as I know from having seen them respectively sign the said paper writing.

1091. Summons to appoint the new trustees (*k*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that pursuant to the judgment [*Or*, order] dated the —— day of ——, 187—, E. F., of [*residence and addition*], and G. H., of, *&c.*, may be appointed trustees of the will of A. B., the testator therein named [*or as may be*], in lieu of L. M., now deceased, and N. O., in the said judgment named [*or as may be; and add, if necessary, directions for conveying, assigning, or vesting the trust property in the new trustees*].

(*h*) See Dan. Pr. 1146.

(*i*) It seems desirable to file the consent with the affidavit.

(*k*) See Dan. Pr. 1146; note (*f*) at p. 593 *ante*. For order appointing new trustees, and vesting the trust estate by a description in a schedule thereto, see *Re Hawkins*, V.-C. W. 16 June, 1866, Reg. Lib. A. 2121. As to the statutory power of trustees to appoint successors, see 23 & 24 Vict. c. 145, ss. 27, 32; Dan. Pr. 1146.

(19.) *Settlement of Deeds* (*l*).

[*Same as* No. 968 *ante*.]

1092. Summons to proceed (*m*).

1093. Direction to the conveyancing counsel to settle the draft of the deed (*n*).

Formal parts: see ante No. 1005.

The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed that the draft of the deed, by the judgment [*Or*, order] dated the —— day of ——, 187—, directed to be settled, be perused and settled by the conveyancing counsel in rotation [*or as may be* (*o*)].

1094. Recitals in a draft, of a judgment or order, and certificate of approval (*p*).

And whereas by a judgment [*Or*, order] made in the said action [*Or*, matter], and dated the —— day of ——, 187—, it was ordered that [*Recite so much of the judgment or order as is material; including the direction that the deed be settled by the Judge, either absolutely, or in case only the parties differ*]. And whereas it appears by the certificate dated the —— day of ——, 187—, of the Chief Clerk of the said Judge, that these presents have been settled by the said Judge, as a proper deed of conveyance [*or as may be*], in pursuance of the said recited judgment [*Or*, order].

[*Same as* No. 1016 *ante*.]

1095. Certificate on copy of draft (*q*).

[*Same as* Nos. 1017 and 1021 *ante*.]

1096. Affidavits of examination of engrossment, and of execution (*r*).

[*Same as* No. 1018 *ante*.]

1097. Memorandum of identity (*r*).

(*l*) As to the settlement of deeds at Chambers, and when this must be done, and when only in case the parties differ, see Dan. Pr. 1146—1148, 1172; Cons. Ord. XXXV. 17.

(*m*) See Dan. Pr. 1146.

(*n*) See Dan. Pr. 1147. As to obtaining the assistance of the conveyancing counsel, see *Ibid.*, and *ante* No. 1005, note (*y*).

(*o*) For form of note of the rotation name, see *ante* No. 1006; and see note (*a*) thereto.

(*p*) See Dan. Pr. 1147.

(*q*) *Ibid.*, 1147, note (*g*); and *ante* No. 1016, note (*t*).

(*r*) See Dan. Pr. 1148.

1098. Certificate of approval (and execution) of deed (*s*).

Formal parts : see post No. 1238.

A proper conveyance to A. B., in the judgment [*Or*, order] dated the —— day of ——, 187—, named, of the hereditaments therein mentioned [*or as may be ; according to the judgment or order*], has been settled : consisting of an indenture intended to be made between [*State whom ; as in the deed*]. The said indenture is identified by my signature in the margin of the engrossment thereof.

[*If so :*] The said indenture has been executed by the plaintiff C. D., and defendant E. F. [*or as may be* (*t*)].

The evidence produced, *&c.*

1099. Certificate of execution (*u*).

[*Same as* No. 1022 *ante.*]

(20.) *Sales by the Court* (*x*).

1100. Notice of motion or summons for the sale of real estate, under 15 & 16 Vict. c. 86, s. 55 (*y*).

Formal parts : see post No. 1571, *or ante* No. 881.

on the part of the plaintiff, that the real estate of A. B., the testator in the pleadings named [*or as may be*], may be sold with the approbation of the Judge : free from the incumbrances of such of the incumbrancers (if any) as shall consent to the sale, and subject to the incumbrances of such (if any) of them as shall not consent thereto. And that the money to arise by such sale may be paid into Court to the credit of this action B. *v.* D., 1876, B. No. ——. "Proceeds of sale of testator's real estate." And if such money, or any part thereof, shall arise from real estate sold with the consent of incumbrancers, that it may be applied in the first place in payment of what shall appear to be due to such incumbrancers according to their priorities (*z*).

1101. Consent of an incumbrancer to estate being sold free from his incumbrance (*a*).

In the High Court of Justice,
Chancery Division.
[*Short title of the action, and reference to the record.*]

I, the undersigned C. D., of [*residence and addition*], do hereby

(*s*) See Dan. Pr. 1148. For form of certificate of good title, approval of conveyance, and parties to execute, and receive the consideration money, see *ante* No. 1020 ; and of approval of lease, *ante* No. 1075.

(*t*) See Dan. Pr. 1120, note (*p*).

(*u*) *Ibid.*, 1120, note (*p*), 1148.

(*x*) As to sales by the Court, see Dan. Pr. 1148—1187. As to directing a sale to be carried out in a District Registry, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 60 ; *McDonald* v. *Foster*, 6 Ch. D. 193 ; *supra*, note (*a*) at p. 468.

(*y*) See Dan. Pr. 1149. For order in like case, on motion, see *Tulloch* v. *Tulloch*, V.-C. M. 24 Jan. 1867, Reg. Lib. B. 103 ; L. R. 3 Eq. 574 ; and for order on summons, for the sale of real estate, see *Harby* v. *Moore*, V.-C. S. at Chambers, 9 Jan. 1864, Reg. Lib. A. 43.

(*z*) If the estate is unencumbered, vary the form accordingly.

(*a*) See Dan. Pr. 1150. As to the interest, in lieu of notice, to which an incumbrancer, consenting to a sale, is entitled, see *Ibid.*

consent that the real estate of A. B., the testator in the order [*Or*, judgment] in this action dated the ——, 187—, named, shall be sold, with the approbation of the Judge, under the provisions of the said order [*Or*, judgment], free from my mortgage thereon for the sum of £500 and interest, created by an indenture dated the ——, 187—. And I agree to join in such sale, and in the conveyance thereof to the purchaser; and to produce, whenever required, for the purpose of such sale, such of the title deeds and writings relating to the said estate as are in my possession or power. Dated this —— day of ——, 187—.

C. D.

Witness to the signature of the said C. D., G. H., of [*residence and addition*].

1102. Proposal of sale (*b*).

In the High Court of Justice,
Chancery Division.

[*Short title, and reference to the record.*]

The proposal of the plaintiff [*or as may be*] for the sale of the real and leasehold estates [*or as may be*] directed to be sold by the judgment [*Or*, order] dated the ——, 187—.

The said estates consist of the particulars set forth in the schedule hereto.

[*If so:* The said estates have been recently surveyed by Mr. G. H., of [*residence and addition*]: who has divided and allotted the same in the manner shown by the said schedule, as the most desirable and beneficial mode of offering the same for sale.]

There is no incumbrance on the said estates.

Or, The only incumbrancer upon the said estates is C. D., of [*residence and addition*]: who has a mortgage thereon for the sum of £——; and who consents [*Or*, who refuses his consent] to the said estates being sold freed from his incumbrance, upon the terms of the said judgment [*Or*, order].

It will be beneficial to the parties interested therein that the said estates shall be sold by auction at ——, in the county of ——, in —— lots.

L. M., of ——, auctioneer, is a fit person to be appointed to sell the said estates.

The plaintiff [*or as may be*] proposes, that the said estates shall be sold by public auction by the said L. M., in the lots, and at the place aforesaid, on the —— day of

(*b*) See Dan. Pr. 1153, note (*i*). As to the different modes of sales which may be sanctioned by the Court, and the course of proceeding to a sale by auction, see *Ibid.*, 1152, 1153. As to sales by private contract, see *post* Nos. 1178—1184. As to who may act as auctioneer, see Dan. Pr. 1157, note (*p*); and as to his remuneration, see *Ibid.*, 1157.

——, 187—, subject to conditions of sale to be approved of in Chambers; and free from [*Or*, subject to] the said incumbrance [*or as may be*].

The schedule above referred to.

[*Set out the particulars of each lot, the tenure, by whom occupied, at what rent, and for what term, &c.*]

1103.

Summons for the appointment of a stranger to conduct the sale (*c*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that A. B., of [*residence and addition*], gentleman, one of the solicitors of the Supreme Court (he consenting) may be appointed to conduct the sale directed by the judgment [*Or*, order], dated the ——, 187—, of the estates therein mentioned: the plaintiffs and defendants respectively having liberty to bid at the said sale; and that the costs of the said A. B. of and incident to such sale may be provided for in such manner as the Judge shall hereafter direct.

1104.

Summons for delivery out, for the purposes of the sale, of documents deposited in Court (*d*).

Formal parts: see ante No. 881.

on the part of the plaintiff,

Or, defendant; *Or*, of A. B., the person appointed to conduct the sale in this cause; *or as may be*;

that [*Describe the documents; as thus*:]

the several deeds and documents specified in the schedule to the affidavit of the defendant C. D., filed the ——, 187—, and deposited by him with the Clerk of Records and Writs, pursuant to the order dated the ——, 187—, or such of them as the applicant may deem necessary,

may be delivered out to the applicant, or to Messrs. E. F., and G. H., his solicitors, or one of them, to enable him [*Or*, them], to prepare for and conduct the sale directed by the judgment [*Or*, order] dated the ——, 187—: the applicant undertaking to redeposit the same whenever required so to do by the Judge; and that, in the meantime, the parties entitled to inspect the documents so delivered out shall be at liberty at all seasonable times, upon reasonable notice, to inspect the same at the office of the

(*c*) See Dan. Pr. 1153. For order in like case, see *Rowland* v. *Evans*, M. R. at Chambers, 23 April, 1862. As to the person to whom the conduct of the sale is usually given, see Dan. Pr. 1153.

(*d*) See Dan. Pr. 1154; and see Seton, ed. 4, 168, Nos. 1, 2. In *Re Powell, Tomkins* v. *Phelps*, M. R. at Chambers, 27 Jan. 1869, an application by the plaintiff (a residuary legatee) in an administration suit, for delivery by the defendants, the executors, to him of the title deeds to the testator's leaseholds, for the purposes of a sale directed in the suit, was refused; but liberty was given to the plaintiff to inspect the deeds at all seasonable times, and the defendants were directed to deliver to him any abstract in their possession; such abstract to be returned to them after the sale.

said Messrs. E. F., and G. H., situate at, *&c.*; and to take copies and abstracts thereof, and extracts therefrom, as they may be advised, at their expense.

1105. Particulars of sale (*e*).

(1). Introductory.

In the High Court of Justice,
Chancery Division.
[*Short title of the action or matter, and reference to the record.*]
Particulars and conditions of sale of [*Insert a general description of the property; as thus:*]
certain freehold and leasehold estates, situate in the parish of ——, in the county of ——: comprising a freehold farm called "Manor Farm," containing about 180 acres of arable, meadow, and pasture land; and four leasehold cottages situate in Bakewell Lane, adjoining the said farm, held for an unexpired term of about 70 years at a nominal rent.
which will be sold by auction by Mr. L. M., with the approbation of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], the Judge to whom this action [*Or*, matter] is attached: pursuant to the judgment [*Or*, order] therein dated the —— day of ——, 187—: at the —— Hotel, at ——, in the county of —— (*f*), on ——, the —— day of ——, 187—, at (5 for 6) o'clock in the evening, in —— lots.
Particulars and conditions of sale may be had, gratis, of Mr. A. B., of ——, in the county of ——, solicitor; of Messrs. C. and D., of, *&c.*; of the auctioneer at ——; and at the place of sale (*g*).

PARTICULARS.

(2). Formal particulars.

Lot 1. A freehold farm called "Manor Farm," situate at ——, in the parish of ——, and county of ——: consisting of 180 acres of arable, meadow, and pasture land, in a high state of cultivation, and a large and commodious farmhouse, brickbuilt and tiled, containing ten rooms: with large barn, cart sheds, stables, and other outbuildings. This lot is in the occupation of Mr. A. B.,

(*e*) See Dan. Pr. 1154.

(*f*) The sale may be in London, or the country, as the Judge may think fit; Dan. Pr. 1157, note (*n*); and see Ord. 16 July, 1851, rule 1; 14 Beav. xiii.; Cons. Ord. XXXV. 61.

(*g*) The public are never to be referred to the Judge's Chambers as a place where prints of the particulars and conditions may be obtained; Dan. Pr. 1159, note (*n*).

under an agreement which expires at Michaelmas next, at the annual rent of £300. The farm is sub-divided as follows :—

No. on plan annexed.	Description.	State.	Quantity. A.	R.	P.
140	House and homestead . .		0	2	0
141	Homeclose . . .	Meadow . .	4	0	0
143	Long ten acres . . .	Arable . . .	10	2	0
	(*Set out the rest of the parcels in like manner.*)	Total .	180	0	0

Lot 1 will be sold subject to a right of way, reserved to the owner of the adjoining lands, and his servants, and others, across the long ten acres, by a footpath running from west to east.

Lot 2. Four leasehold cottages, each containing four rooms and a closet, and a small garden to each cottage : all situate in Bakewell Lane, adjoining the long ten acres.

Lot 2 is held under a lease for a term of 80 years from Lady day, 18—, at a ground rent of £——; and is now in the several occupations of C., D., E., and F. as weekly tenants, at rentals amounting to £——, per annum.

1106.

Memorandum of direction to the conveyancing counsel, to advise on and settle the conditions of sale (*h*).

Formal parts : see ante No. 1005.

The Master of the Rolls [*Or*, Vice-Chancellor ——] has directed that an abstract of title to the estates by the judgment [*Or*, order] in this action [*Or*, matter] dated the —— day of ——, 187—, directed to be sold : and which are comprised in the particulars to which I have put my initials : be laid before the conveyancing council in rotation [*or as may be* (*i*)], for his opinion thereon, with a view to such sale ; and to advise what, if any, special conditions of sale are rendered necessary or proper by the state of the title ; and that such special conditions, if any, be settled by such counsel.

(*h*) See Dan. Pr. 1155. As to the necessity for laying the abstract before the conveyancing counsel, see *Ibid.*; and 15 & 16 Vict. c. 86, s. 56. The particulars of sale should, in strictness, be settled at Chambers, before the abstract is sent to the conveyancing counsel ; but this is often disregarded in practice ; Dan. Pr. 1155, note (*b*). An affidavit verifying the abstract is not required, preparatory to a sale by the Court ; *Ibid.*, note (*c*).

(*i*) As to obtaining the reference to the conveyancing counsel in rotation, or

1107.

CONDITIONS OF SALE.

Ordinary conditions of sale (*k*):

1. No person is to advance less than £—— at each bidding. (1). Advance at each bidding (*l*).

2. The sale is subject to a reserved bidding for each lot: which has been fixed by the Judge to whose Court this cause is attached; and the vendor reserves a right to bid (*n*). (2). Reserved bidding (*m*).

3. Each purchaser is at the time of sale to subscribe his name and address to his bidding, in the bidding paper; and the abstract of title, and all written notices, and communications, and summonses, are to be deemed duly delivered to and served upon the purchaser, by being left for him at such address: unless or until he is represented by a solicitor. (3). Bidding paper (*o*).

4. Each purchaser is, at the time of sale, to pay a deposit of £—— per cent. on the amount of his purchase money to A. B., the person appointed by the said Judge to receive the same. (4). Deposit (*p*).

5. The Chief Clerk of the said Judge will after the sale proceed to certify the result; and ——, the —— day of ——, 187—, at —— of the clock in the ——noon, is appointed as the time at which the purchasers may, if they think fit, attend, by their solicitors, at the Chambers of the said Judge in the Rolls' Yard, Chancery Lane [*or as may be*], in the county of Middlesex, to settle such certificate. The certificate will then be settled; and will in due course be signed and filed, and become binding, without further notice or expense to the purchasers. (5). Certifying result of sale (*q*).

6. The vendor is, within —— days (*s*) after such certificate has (6). Time for delivery of the abstract (*r*);

to one in particular of such counsel, see Dan. Pr. 1046, 1047; and *ante* No. 1005, note (*z*). For form of note of the rotation name, see *ante* No. 1006.

(*k*) For this form, see Regul. 8 Aug. 1857, Sched. No. 7. As to the preparation and settlement of conditions of sale, see Dan. Pr. 1155, 1156.

(*l*) See Dan. Pr. 1156.

(*m*) *Ibid.* Where the property is to be sold without reserve, this condition is varied accordingly; *Ibid.* 1156, note (*g*); and as to the form of this condition generally, see the Sale of Land by Auction Act, 1867 (30 & 31 Vict. c. 48), ss. 5, 8. As to reserved biddings, see Dan. Pr. 1158; and *post* Nos. 1113, 1114.

(*n*) *Yonge* v. *Furse*, Rolls' Chambers, Aug. 1870.

(*o*) As to the bidding paper, see Dan. Pr. 1156, 1161; and *post* Nos. 1122, 1130.

(*p*) This is to be inserted only when a deposit is directed; in which case, the person appointed to receive the deposit must give security. As to deposits, see Dan. Pr. 1156—1158; and *post* Nos. 1117—1119.

(*q*) See Dan. Pr. 1156; and *post* Nos. 1124, 1132.

(*r*) See 15 & 16 Vict. c. 86, s. 56: Dan. Pr. 1155, 1156; and *post* No. 1144.

(*s*) The ordinary period is four or seven days after the certificate has become binding; Dan. Pr. 1164, note (*g*).

become binding, to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within —— days after the actual delivery of the abstract, to deliver at the office of Mr. A. B., solicitor, at C., in the county of D., a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract; and upon the expiration of such last-mentioned time—and in this respect time is to be deemed of the essence of the contract—the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions if any.

and objections and requisitions (*t*).

(7). Ascertaining value of timber (*u*).

7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards, if any, on the lot purchased by him, down to 1*s.* per stick inclusive: the amount thereof to be ascertained by a valuation to be made in manner following; that is to say:—each party (vendor and purchaser) or his solicitor is, within —— days after the Chief Clerk's certificate has become binding, to appoint by writing one valuer, and give notice in writing to the other party of such appointment; and the valuers so appointed are to make such valuation; but before they commence their duty, they are to appoint an umpire by writing; and the decision of such valuers, if they agree, or of such umpire, if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof, in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

(8). Payment of purchase money (*x*).

8. Each purchaser is, under an order for that purpose to be obtained by him,

or, in case of his neglect, by the vendors at the costs of the purchaser (*y*),

upon application at the Chambers of the said Judge, to pay the amount of his purchase money

(after deducting the amount paid as a deposit), together with the amount of the valuation under the 7th condition, it any (*z*),

into Court, to the credit of [*&c.; as in the judgment or order directing the sale*], on or before the —— day of ——, 187—; and if the same is not so paid, then the purchaser is to pay interest on his purchase money,

(*t*) See Dan. Pr. 1156.
(*u*) *Ibid.* As to timber, see *post* No. 1185.
(*x*) See Dan. Pr. 1156, 1170, 1171; and *post* Nos. 1145, 1146, 1148—1150.
(*y*) See Dan. Pr. 1179; and *post* No. 1169.
(*z*) This must be altered, if the 4th or 7th condition is not inserted.

including the amount of such valuation (*b*).
at the rate of £—— per cent. per annum, from the —— day of ——, 187—, to the day on which the same is actually paid: deducting property tax. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the —— day of ——, 187— (*d*), down to which time all outgoings are to be paid by the vendors.

Possession. Outgoings.

9. If any error or misstatement shall appear to have been made in the above particulars, such error or misstatement is not to annul the sale, nor entitle the purchaser to be discharged from his purchase; but a compensation is to be made to, or by, the purchaser, as the case may be; and the amount of such compensation is to be settled by the said Judge at Chambers.

(9). Compensation (*e*).

[*Add to these, such conditions respecting the title and title deeds, as the conveyancing counsel shall advise to be necessary or proper* (*f*).]

LASTLY. If the purchaser shall not pay his purchase money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge, upon application at Chambers, for the resale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such resale, and of all costs and expenses occasioned by such default.

(10). Resale on default (*g*).

1108.

Examples of special conditions of sale (*h*):

If any purchaser shall make any valid objection or requisition which the vendor may be unable to remove or comply with, such purchaser may be discharged from being purchaser by an order of the Judge; and, notwithstanding intermediate negotiations, such purchaser shall be entitled to a return of his deposit (if any), but shall not, unless the Judge shall otherwise direct, be entitled to any interest, costs, expenses, or damages in respect of his purchase.

(1). Rescission of the contract of sale (*i*).

Or, If the purchaser shall insist on any objection or requisition which the vendors shall consider themselves unable, or, on the ground of expense, or for any other reason which the Judge shall consider sufficient, shall decline to remove or comply with, the vendors, with the sanction of the Judge,

(*b*) This must be omitted, if the 7th condition is not inserted.
(*d*) See Dan. Pr. 1156; and *post* Nos. 1145, 1146.
(*e*) See Dan. Pr. 1156, 1170; and *post* Nos. 1150, 1151.
(*f*) See Dan. Pr. 1156; and *post* No. 1108.
(*g*) See Dan. Pr. 1156; and *post* Nos. 1169, 1170.
(*h*) See Dan. Pr. 1156; and *ante* No. 1107 (9).
(*i*) See Dan. Pr. 1166, note (*c*); and *post* Nos. 1172, 1173.

shall, notwithstanding any intermediate negotiation, and although they may have insisted that the objections and requisitions are untenable, be at liberty, by notice in writing, signed by their solicitors, to rescind the contract, upon such terms in all respects as the Judge shall direct.

(2). Root of title; earlier title not to be required.

The title shall commence with indentures dated, *&c.* The purchaser shall not, notwithstanding any recital, reference, notice, or covenant for production, of or to prior title, be at liberty to investigate or require any explanation or make any requisition or objection as to any title, or evidence of title, or any other matter whatsoever, prior to the said commencement, or appearing by such recital, reference, notice, or covenant; and the benefit of this condition shall not be waived or affected by the vendor furnishing an abstract of earlier title, or replying to any requisition of, or giving any information to, the purchaser, or by reason of anything being specifically provided for by these conditions; and every abstracted deed or document of title, dated more than twenty years prior to the day of sale, shall be accepted as sufficient evidence of the descriptions and characters of parties, facts, matters, and conclusions of law recited, stated, implied, or assumed therein.

(3). Proceedings in action to be conclusive.

All facts or matters admitted or proved in the above-mentioned action of A. *v.* B., or certified by the Chief Clerk of the Judge to whom that action is attached, shall be deemed thereby conclusively evidenced.

(4). Easements.

The property is believed, and shall be taken, to be correctly described, and is sold subject to all easements (if any), subsisting therein.

(5). Identity of parcels, &c.

The purchaser shall admit the identity of the property purchased by him with that comprised in the muniments offered by the vendors as the title to such property, upon the evidence afforded by a comparison of the descriptions in the particulars and muniments, and of a declaration, to be made (if required) at the purchaser's expense, that the property sold is held under the abstracted title; and the purchaser shall not make any objection or requisition founded upon any variance between the present measurements and the quantities stated in the abstracted muniments; and the purchaser shall be deemed to buy with full notice of the state of the property as respects repairs, insurance, party walls, and all other matters.

(6). Expenses to be borne by purchaser.

If the purchaser shall, consistently with these conditions, require an abstract or the production of any deed or document not in the vendor's possession, or any office, attested, or other copy of, or extract from, any deed or document, whether in the vendor's possession or not, whether for the purpose of verifying the abstract or of accompanying or completing the title, or otherwise, or any affidavit, statutory declaration, certificate, or other evidence, or any further information as to the said action of A. *v.* B. than the abstract of the pleadings and judgment [*Or*, order for

sale], and any subsequent orders, or the concurrence in his conveyance of any person other than the vendors, the expense of complying, or endeavouring to comply, with every such requisition shall be borne by the purchaser: who shall also bear the expense of stamping or restamping any unstamped or insufficiently stamped muniments of title, should any such there be (which however is not known to be the case), and of all searches, inquiries, and journeys for any of the above purposes.

(7). Covenants for title.

The purchaser shall not require from any conveying party any other covenant than a covenant that such party has not incumbered, or require for any purpose the concurrence of any person in respect of any beneficial interest bound by the judgment or order for sale.

(8). Title deeds; covenants for production.

The purchaser shall be entitled, on the completion of his purchase, to the custody of such of the deeds and muniments of title in the possession of the vendors as relate exclusively to the property sold; and as to such deeds and muniments of title in the possession of the vendors as relate to the property sold, and also to any other property or matter, the same will be retained by the vendors: who will enter into, or procure to be entered into, by some or one of the parties beneficially interested, the usual qualified and defeasible covenant of a trustee with a purchaser for producing and furnishing copies: the deed of covenant to be prepared and perfected by and at the expense of the purchaser, including the expense of perusal and execution for and by the covenantor, and all other necessary parties, if any.

1109

Certificate, verifying copy of special conditions as settled by the conveyancing counsel (*j*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

We [*Or*, I] certify the above [*Or*, within] to be a true copy of the draft conditions of sale as settled by Mr. D., the conveyancing counsel in this action [*Or*, matter].

E. & F., solicitors for the plaintiff [*or as may be*],
——, 187—.

1110.

Affidavit as to the mode of lotting (*k*).

Formal parts: see ante No. 693.

1. I have for —— years last past been engaged in the business of an auctioneer and land and estate agent; and for —— years last past I have carried on such business at —— aforesaid; and I have had considerable experience in the mode of lotting and selling land and house property.

2. I know and am well acquainted with the estates situate at

(*j*) See Dan. Pr. 1156. This certificate is usually required whenever the original draft, as settled by the conveyancing counsel, is not left at Chambers.

(*k*) See Dan. Pr. 1157.

——, in the county of ——, proposed to be sold in this action and described in the paper writing, marked A., now produced and shown to me (*l*).

3. On the —— day of ——, 187—, I went over the said estates, and made a careful survey thereof, for the purpose of forming an opinion as to the best mode of dividing and allotting the said estates for the said sale thereof.

4. The said paper writing marked A., sets forth a true and correct description of the said estates, to the best of my knowledge and belief, and the mode in which, in my judgment and opinion, it will be desirable to lot and divide the same for the purposes of the said sale.

5. In my judgment and belief the said estates will be sold to the most advantage, and will be likely to realise the best prices, if the scheme of division and allotment set forth in the said paper writing marked A., be adopted.

6. The —— day of ——, 187—, at (5 for 6) of the clock in the evening, and the —— Hotel, at ——, in the county of ——, will be a desirable and convenient time and place for the said sale (*ll*).

1111.

Affidavit of fitness of proposed auctioneer (*m*).

Formal parts; see ante No. 693.

1. I have for —— years last past, known and been well acquainted with L. M., of [*residence and addition*], auctioneer and land and estate agent; and during all that time the said L. M. has carried on business as an auctioneer and land and estate agent at ——, aforesaid [*or as may be*].

2. I have on several occasions employed the said L. M. as an auctioneer and land valuer: and am also acquainted with several persons who are in the habit of employing him in that capacity; and he has invariably given entire satisfaction to me, and I believe also to such other persons.

3. The said L. M. is a person of respectability and integrity, and of considerable ability as an auctioneer and land and estate agent; and in my judgment he is a fit and proper person to be employed to sell the estates, situate at ——, in the county of ——, proposed to be sold in this action.

1112.

Advertisement of the sale (*n*).

To be sold, pursuant to a judgment [*Or*, order] of the High Court of Justice, made in an action, Jones *v.* Brown [*or as may be*], with the approbation of the Master of the Rolls [*Or*, the Vice-Chancellor ——], by Mr. L. M., the person appointed by the said Judge, at the —— Hotel, at ——, in the county of ——, on ——,

(*l*) Exhibit same. For form of memorandum thereof, see *ante* No. 723.

(*ll*) See note (*f*) to No. 1105 *ante*.

(*m*) See Dan. Pr. 1157. This affidavit appears to be only required in cases where the competency of the auctioneer is not known at the Judge's Chambers; see *Ibid.*

(*n*) See Dan. Pr. 1157. As to the signature to and insertion of the ad-

the —— day of ——, 187—, at (5 for 6) o'clock in the evening, in —— lots, certain freehold [*Describe the property shortly; see* No. 1105 (1) *ante*]. Particulars and conditions of sale may [*Conclude as in* No. 1105 (1) *ante*]. Dated [*&c.; Conclude as in* No. 974 *ante*].

1113.
Affidavit as to the amount to be fixed for the reserved biddings (*o*).

Formal parts; see ante No. 693.

1. I have carefully examined and surveyed the estates particularly described in the printed particulars of sale marked A., now produced and shown to me (*p*), in order to form an opinion as to the value thereof, and the amounts which the said estates ought to realise on the sale thereof advertised to take place on the —— day of ——, 187—.

2. I have, in the paper writing marked B., now produced and shown to me (*q*), set forth, in the first column, the number of the lots into which the said estates have been divided for the purposes of the said sale; and in the second column, opposite the numbers of the said lots respectively, the full values of the said lots respectively; and in the third column, opposite the said numbers respectively, the amounts which, in my judgment and belief, should be fixed as the reserved biddings for the said lots respectively on the said sale.

1114.
Valuation (B) referred to in No. 1113. (*r*).

In the High Court of Justice,
Chancery Division.

B.

[*Short title.*]

This paper writing marked B., was produced and shown to L. M., and is the paper writing so marked referred to

vertisement, see *ante* No. 974, note (*g*). As to the fee payable on the advertisement, see *ante* No. 956, note (*s*). For form of advertisement of sale by tender, see *post* No. 1141.

(*o*) See Dan. Pr. 1158. As to the reserved bidding, and the mode of ascertaining and fixing the same, see *Ibid.*; and *ante* No. 1107 (2).

(*p*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

(*q*) See *post* No. 1114. Care must be taken to refer to the valuation as an exhibit; so that neither the value of any lot, nor the price which, in the opinion of the deponent, it ought to fetch at the sale, may be disclosed by the affidavit when filed; Regul. 8 Aug. 1857, rule 13; Dan. Pr. 1158. Should this rule be neglected, either the affidavit should not be filed; in which case the original must be used at Chambers, instead of an office copy; or another affidavit complying with the rule, must be obtained; Dan. Pr. 1158, note (*a*).

(*r*) See Dan. Pr. 1158.

in his affidavit sworn in this action on the —— day of ——, 187—, before me :

E. F., a Commissioner, &c. [*or as may be ; see ante* No. 696].

No. of Lot.	Value.	Proposed reserved bidding.
	£	£
1	2000	1850
2	500	450

L. M.

1115.

Summons for leave to bid at the sale (*s*).

Formal parts ; see ante No. 881.

on the part of the plaintiff,

Or, of the defendant ; *Or,* of X. Y. : who has liberty to attend the proceedings ; *or as may be ;*

that he may be at liberty to bid at the sale directed by the judgment [*Or,* order], dated the —— day of ——, 187—, of the estates therein mentioned.

1116.

Certificate verifying print of particulars and conditions (*t*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

We [*Or,* I] certify the above [*Or,* within] to be a correct print of the particulars and conditions of sale, as settled in the Chambers of the Master of the Rolls [*Or,* Vice-Chancellor ——], in this action.

E. & F., solicitors for the plaintiff [*or as may be*],
——, 187—.

(*s*) See Dan. Pr. 1159, 1160. For order in like case, see Seton, ed. 3, 1182, No. 3.

(*t*) See Dan. Pr. 1159.

1117. Recognizance as security for deposits (*u*).

L. M. [*the principal*], of [*residence and addition*], C. D., of, *&c.*, and E. F., of, *&c.* [*the sureties* (*x*)], before our Sovereign Lady the Queen in Her High Court of Justice personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to the Right Honourable Sir George Jessel, knight, the Master of the Rolls, and the Honourable Sir Richard Malins, knight, the senior Vice-Chancellor of the Chancery Division of the said Court, the sum of £—— (*y*), of good and lawful money of Great Britain: to be paid to the said Sir George Jessel, and Sir Richard Malins, or one of them, or the executors, or administrators of them, or one of them; and unless they do pay the same, they the said L. M., C. D., and E. F., are willing and do grant, and each of them is willing and doth grant, for himself, his heirs, executors, and administrators, that the said sum of £—— shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels of them and each of them, wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, at Westminster, the —— day of ——, in the —— year of Her reign, and in the year of our Lord, 187—.

[*Short title.*]

The Master of the Rolls [*Or*, Vice-Chancellor ——], the Judge to whom this action is attached, has approved of, and allowed, this recognizance.

R. M., Chief Clerk.

Whereas by a judgment [*Or*, an order] of the High Court of Justice, made in an action wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another] are plaintiffs, and C. D. and others [*Or*, another] are defendants,

(187—, B. No. ——),

Or, in a certain matter there depending, intituled "In the matter of ——,"

and dated the —— day of ——, 187—, it was ordered that the real and leasehold estates of G. H., the testator in the said action

(*u*) See Dan. Pr. 1156, 1158; and *ante* No. 1107 (4). As to the security to be given for deposits, see Dan. Pr. 1156, 1158; Ord. 16 July, 1851, rule 3; 14 Beav. xiv.; Cons. Ord. XXXV. 61; and as to enrolling, and vacating the enrolment, of a recognizance, Dan. Pr. 1159. The recognisance must be engrossed on parchment; and must bear a 10*s.* stamp impressed thereon or adhesive thereto; Ord. as to Court Fees Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*x*) Where, as often happens, one surety is deemed sufficient, the form must, of course, be varied accordingly.

(*y*) This should be double the probable amount of the deposits; Dan. Pr. 1159.

[*or as may be directed by the judgment or order*], should be sold, with the approbation of the Judge: And whereas the said estates have been ordered by the Master of the Rolls [*Or*, the Vice-Chancellor ——], the Judge to whom the said action [*Or*, matter], is attached, to be sold on the —— day of ——, 187—; and by one of the conditions of such sale, approved by the said Judge, it is provided that each purchaser, shall, immediately after the sale, pay into the hands of the said L. M. (the person appointed by the said Judge to receive the same), a deposit of £—— per cent. on the amount of his purchase money: And whereas the said Judge has directed the said L. M. to give security that he will duly account for all monies to be received by him by virtue of the said condition; and has approved of the above bounden C. D. and E. F. as securities for the said L. M.; and has also approved of the above-written recognizance, with the under-written condition, as a proper security to be entered into by the said L. M., C. D., and E. F., pursuant to the said order, and the Consolidated General Orders of the Court in that behalf; and in testimony of such approbation, the Chief Clerk of the said Judge has signed an allowance in the margin hereof:

Now the condition of the above-written recognizance is such, that if the said L. M. do and shall duly account for all and every the sum and sums of money which he shall receive on account of the purchase moneys of the said estates, or any part thereof;

[*If it is intended that the recognizance shall extend to any future sale, add:*] at the said sale; or, in case the said estates, or any part thereof, shall not be sold at the said sale, then also for all and every the sum and sums of money which the said L. M. shall receive on account of the said purchase monies of the said estates, or any part thereof, at any subsequent sale or sales (*a*);

and do and shall duly pay the same in such manner, and at such time or times, as the said Judge has directed, or shall hereafter direct: then the above recognizance shall be void and of none effect: otherwise the same is to be and remain in full force and virtue.

L. M. }
C. D. } Taken and acknowledged by the above-named L. M., C. D., and E. F., at ——, in the (county) of ——,
E. F. } this —— day of ——, 187—,

before me,

[*Signature, and style of office, of officer or commissioner by whom the recognizance is taken: see ante* No. 696.]

1118. Affidavit of the sureties as to their solvency (*b*).

In the High Court of Justice,
Chancery Division.

[*Title of the action or matter, and reference to the record.*]

We, C. D., of [*residence and addition: as in the recognizance*],

(*a*) See Dan. Pr. 1163, note (*y*).

(*b*) *Ibid.*, 1159. Where one surety is deemed sufficient, this form must be varied accordingly.

and E. F., of, *&c.*, the proposed sureties that L. M., of [*residence and addition of the principal: as in the recognizance*], will duly account for the deposits to be received by him on the sale in this action [*Or*, matter], severally make oath and say as follows :—

1. First, I the said C. D., for myself say, that I am, after payment of all my just debts and liabilities, well and truly worth the sum of £—— [*Insert the amount for which he is to be bound by the recognizance*].

2. And I, the said E. F., for myself say, that I am [*Continue as in paragraph* 1, *to the end*].

Sworn [*&c.: see ante* No. 696 *or* 698].

1119. Summons for payment or transfer into Court of a security fund, instead of giving a recognizance (*c*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that A. B., the person appointed to receive the deposits payable by the purchasers on the sale, on the —— day of ——, 187—, directed by the judgment [*Or*, order], dated the —— day of ——, 187—, may be at liberty, on or before the —— day of ——, 187—, to pay the sum of £A, into Court, to the credit of

Or, to transfer the sum of £B, consolidated £3 per cent. annuities [*or as may be*], into Court to the credit of

this action [*Or*, matter], B. *v.* D., 187—, B. No. —— [*or as may be*], "Security for deposits account," as security for the deposits to be received by him as aforesaid. [*If it is desired to invest the cash, or the dividends to accrue on the stock* (*d*), *add a direction to do so; see post* No. 1998.]

1120. Directions to auctioneer, as to the conduct of a sale in several lots, where there are reserved biddings (*e*).

Commence as in No. 1005 *ante.*

Mr. L. M., the person appointed to sell the estates advertised for sale in this action [*Or*, matter], is requested to attend to the following directions :—

R. M., Chief Clerk.

The sale is to be conducted in accordance with the accompanying printed particulars and conditions, signed by the Chief Clerk (*f*). This print is to be carefully preserved, and returned to the Judge's Chambers: with the affidavit of the result of the sale (*g*).

The sale is to be subject to the reserved bidding specified in the

(*c*) See Dan. Pr. 1159. For orders, in like case, for payment in of cash, see *Wells* v. *Hall*, V.-C. B. at Chambers, 5 Aug. 1870, Reg. Lib. B. 2292; and for transfer of stock, see *Strong* v. *Hart*, M. R. at Chambers, 23 Mar. 1869, Reg. Lib. B. 700. For the mode of paying money into Court, see *post* note (*o*) to No. 1974; and for the mode of transferring stock into Court, see *post* note (*a*) to No. 1975.

(*d*) See Dan. Pr. 1159.

(*e*) *Ibid.*, 1160.

(*f*) See *ante* No. 1116.

(*g*) See *post* No. 1123.

accompanying note (*h*). This note is not to be opened till the time of sale. The reserved bids are not to be divulged to any person, either at, or at any time after, the sale (*i*).

In case there is no bidding for any lot equal to, or higher than, the reserved bid, the person appointed to sell is to declare that such lot is not sold, but has been bought in on account of the persons interested in, or entitled to, the property (*k*).

The accompanying bidding-paper (*l*) is to be carefully filled up. The highest sum bid, whether the lot is sold or not, is to be inserted in the second column. In the event of no person bidding for any lot, the words "no bidding" are to be written in the second column, opposite the number of such lot. When, although there is a bidding, the lot is not sold, the words "not sold" are to be written in the third column. The purchasers are to sign their names in the third column, and any person who purchases as agent for another must so sign: otherwise he must be treated as the purchaser (*m*). The purchaser's address and quality are to be fully stated in the fourth column.

When the purchaser's signature is not plain, or initials are used, a note must be put at the foot of the bidding-paper, as follows: "The name of the purchaser of lot —— is ——" (*n*).

1121. Note of the reserved biddings (*o*).

Commence as in No. 1005 *ante.*

The reserved biddings fixed by the Master of the Rolls [*Or*, Vice-Chancellor ——], to which the sale in this action [*Or*, matter] is to be subject, are as follows, viz.:—

For Lot 1	£800
For Lot 2	£250
For Lot 3	£300
For Lot 4	£700

(*h*) See Dan. Pr. 1158; Ord. 16 July, 1851, rule 2; 14 Beav. xiii.; Cons. Ord. XXXV. 61; Sugd. V. & P. 96; and *post* No. 1121.

(*i*) See Dan. Pr. 1161.

(*k*) *Ibid.*; Ord. 16 July, 1851, rule 2; 14 Beav. xiii. Cons. Ord. XXXV. 61.

(*l*) See *post* No. 1122.

(*m*) As to getting the principal substituted for the agent, where this direction has not been followed, see Dan. Pr. 1161, note (*f*).

(*n*) Insert the name in full, and plainly.

(*o*) See Dan. Pr. 1160; and *ante* No. 1120. The blanks in this and succeeding forms have been filled up, as guides only in using forms of the like nature.

For Lot 5	£650
For Lot 6	£710

R. M., Chief Clerk.

1122. Bidding paper on a sale in several lots (*p*).

In the High Court of Justice,
Chancery Division.

B.

[*Short title of the action or matter.*]

This bidding-paper, marked B., was produced and shown to L. M., and is the same as is referred to in his affidavit sworn this —— day of ——, 187—, before me, E. F., a commissioner, &c. [*or as may be : see ante* No. 696.]

We, whose names are hereunder subscribed, respectively bid at the sale by auction in the above action [*Or*, matter], on the —— day of ——, 187—, the sums set opposite to our respective names for, and became the purchasers of, the respective lots specified in the particulars produced at such sale, the numbers of which are set opposite to our respective names, subject to the conditions also produced at such sale.

No. of Lot.	Amount of highest bidding.	Signatures of the purchasers of the lots sold.	Purchaser's address and quality.
1	£900	Edward Thornton .	Epping, Essex, Farmer.
2	£200	Not sold.	
3	No bidding.		
4	No bidding.		
5	£500	Not sold.	
6	£750	Arthur Cuthbertson, agent for T. E. Masson (*q*).	Ilford, Essex, Esquire.

Note.—The name of the purchaser of Lot 6 is Thomas Edward Masson.

(*p*) See Dan. Pr. 1156, 1160, 1161 ; and *ante* Nos. 1107 (3), 1120.
(*q*) See Dan. Pr. 1161.

1123.

Affidavit of result of a sale in several lots (*r*).

In the High Court of Justice,
Chancery Division.

[*Title of the action or matter, and reference to the record.*]

I, L. M., of [*residence and addition*], the person appointed by the Judge to whom this action [*Or*, matter] is attached to sell the estates comprised in the particulars hereinafter referred to, make oath and say as follows :—

1. I did, at the time and place, in the lots, and subject to the conditions specified in the particulars and conditions of sale now produced and shown to me and marked with the letter A. (*s*), put up for sale by auction the estates described in such particulars ; and the result of such sale is truly set forth in the bidding-paper marked with the letter B. now produced and shown to me (*t*).

2. [*If any lots were sold, say :*] The sums set forth in the second column of such bidding-paper are the highest sums bid for the respective lots, the numbers of which are set forth in the first column, opposite to such respective sums ; and the persons whose names are subscribed in the third column of such bidding-paper as purchasers, were respectively the highest bidders for, and became the purchasers of, the respective lots, the numbers whereof are set opposite to such respective names in the said first column of the said bidding-paper, at the prices or sums set opposite to their respective names in the said second column thereof.

3. [*If any lots were bid for, but not sold, add :*] The several lots opposite to the numbers of which I have, in the third column of the said bidding-paper, written the words "not sold," were not sold : no person having bid a sum equal to, or higher than, the reserved bidding fixed by the said Judge.

4. [*If any lots were not bid for, add :*] No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding-paper written the words "no bidding."

5. [*In every case, add :*] The said sale was conducted by me in a fair, open, and candid manner, and according to the best of my skill and judgment.

6. [*If a deposit was paid* (*u*), *add :*] I have received the sums set forth in the fourth column of the schedule hereto, as deposits from the respective purchasers whose names are set forth in the

(*r*) See Dan. Pr. 1160, 1161. For the above form, see Regul. 8 Aug. 1857, Sched. No. 8. An office copy of the affidavit, together with the exhibits, must be left at the Judges' Chambers at least one clear day before the day appointed by the conditions for settling the certificate of the result of the sale : in order that the certificate may be prepared in due time ; and these papers must be so left, although no part of the property has been sold at the auction ; see *Ibid.*, rule 15 ; Dan. Pr. 1161 ; and see *Ibid.*, 1162, note (*i*).

(*s*) Exhibit the print signed by the Chief Clerk ; see *ante* Nos. 1116, 1120, 1123. For form of memorandum of exhibit, see *ante* No. 723.

(*t*) See *ante* No. 1122.

(*u*) See *ante* No. 1107 (4).

second column of such schedule, opposite the said respective sums, in respect of their respective purchase moneys set forth in the third column of the said schedule, opposite such names, for the respective lots the numbers of which are set forth in the first column of the said schedule opposite to such respective names; leaving due in respect of the purchase moneys set forth in the said third column, the respective sums set forth in the fifth column of the said schedule.

The schedule above referred to.

No. of Lot.	Name of purchaser.	Amount of purchase-money.	Amount of deposit received.	Amount remaining due.
		£	£	£
1	Edward Thornton . .	900	90	810
6	Thomas Edward Masson .	750	75	675
	Totals . £	1650	165	1485

Sworn [*&c.: see ante* No. 696].

1124. Chief Clerk's certificate of result of a sale in several lots (*x*).

Title, and introduction: see post No. 1238.

The real estates of A. B., the testator in the said judgment [*Or,* order] dated the —— day of ——, 187—, named, and thereby [*or as may be*] directed to be sold, have been offered for sale in six lots by public auction, with the approbation of the said Judge, subject to a reserved bidding for each lot, fixed by the said Judge, and according to certain particulars and conditions of sale; and the several persons named in the first column of the first schedule hereto were the highest bidders for, and they are allowed by the said Judge to be the purchasers of, the respective lots set opposite to their respective names in the second column of the said first schedule, at the prices or sums set opposite to their respective names in the third column of the said first schedule.

The purchasers have paid the several sums set opposite their respective names in the fourth column of the said schedule, as deposits, to L. M., the person appointed by the said Judge to receive the same: such sums being the amounts fixed by the said Judge to be paid as deposits by the purchasers respectively at such sale; and the several sums set opposite the respective names of such purchasers in the fifth column of the said schedule remain due from the said purchasers respectively, as the balance of their respective purchase moneys. The said several sums mentioned in the fourth column of the said schedule, which have been received

(*x*) See Dan. Pr. 1162; and *ante* No. 1107 (5). As to the completion of the certificate, see Dan. Pr. 1162.

by the said L. M., amount together to the sum of £165: which sum of £165 the said L. M. is, on or before the —— day of ——, 187— (*y*), to pay into Court to the credit of [*&c.; as in judgment or order directing the sale*].

The purchaser of the lot numbered 6 is T. E. M., a defendant in this action: an order dated the —— day of ——, 187—, having given him liberty to bid (*z*).

No person bid for either of the lots numbered 2 and 5 a price equal to, or higher than, the sum fixed as the reserved bidding; and therefore such lots were not sold at such auction.

No person bid for either of the lots numbered 3 and 4.

The particulars of the lands and hereditaments comprised in the respective lots so sold as aforesaid are set forth in the second schedule hereto.

Or, are set forth in the exhibit marked A. to the affidavit of L. M., filed the ——, 187— (*a*), and which exhibit is to be filed with this certificate.

The evidence produced, *&c.*

The (first) schedule above referred to.

Name and address of the purchaser.	No. of Lot.	Price.	Deposit.	Balance remaining unpaid.
		£	£	£
Edward Thornton, of Epping, Essex, Farmer. . .	1	900	90	810
Thomas Edward Masson, of Ilford, Essex, Esquire.	6	750	75	675
	Totals	1650	165	1485

The second schedule above referred to.

[*Set out the particulars of each lot sold: as in the printed particulars of sale* (*b*).]

(*y*) See Dan. Pr. 1162; Ord. 16 July, 1851, rule 3; 14 Beav. xiv.; Cons. Ord. XXXV. 61. As to the course, where default is made in payment, see Dan. Pr. 1162; and *post* No. 1137.

(*z*) As to the course where a party to the suit bids without leave, see Dan. Pr. 1160; and *post* No. 1136.

(*a*) This is the print signed by the Chief Clerk; see *ante* Nos. 1116, 1120, 1123.

(*b*) This schedule is, of course, omitted where, as frequently happens in practice, the printed particulars are filed with the certificate.

1125. Directions to the auctioneer, as to the conduct of a sale in several lots, without reserve (*c*).

Commence as in No. 1120 *ante.*

The sale is to be conducted in accordance with the accompanying printed particulars and conditions signed by the Chief Clerk (*d*). This print is to be carefully preserved, and returned to the Judge's Chambers: with the affidavit of the result of the sale (*e*).

The accompanying bidding-paper (*f*) is to be carefully filled up. The highest sum bid is to be inserted in the second column. In the event of no person bidding for any lot, the words "no bidding" are to be written in the second column opposite the number of such lot.

The purchasers are to sign their names [*Conclude as in* No. 1120 *ante*].

1126. Bidding paper in like case (*g*).

[*Same as* No. 1122 *ante: omitting all reference to the lots bid for but not sold.*]

1127. Affidavit, and Chief Clerk's certificate, of result of the sale, in like case (*g*).

[*These forms can readily be prepared from* Nos. 1123 and 1124 *ante.*]

1128. Directions to auctioneer, as to the conduct of a sale in one lot, where there is a reserved bidding (*h*).

Commence as in No. 1120 *ante.*

The sale is to be conducted in accordance with the accompanying printed particulars and conditions signed by the Chief Clerk (*i*). This print is to be carefully preserved, and returned to the Judge's Chambers: with the affidavit of the result of the sale (*k*). The sale is to be subject to the reserved bidding specified in the accompanying note (*l*). This note is not to be opened till the time of sale. The reserved bid is not to be divulged to any person, either at or at any time after the sale (*m*).

In case there is no bidding equal to, or higher than, the reserved bid, the person appointed to sell is to declare that the property is

(*c*) See Dan. Pr. 1158, 1161; and notes to No. 1120 *ante.*
(*d*) See *ante* No. 1116.
(*e*) See *ante* No. 1123; and *post* No. 1126.
(*f*) See *ante* No. 1122; and *post* No. 1126.
(*g*) See Dan. Pr. 1160—1162; and *ante* No. 1125.
(*h*) See Dan. Pr. 1161; and notes to No. 1120 *ante.*
(*i*) See *ante* No. 1116.
(*k*) See *post* No. 1131.
(*l*) See *post* No. 1129.
(*m*) See Dan. Pr. 1161.

not sold, but has been bought in on account of the persons interested in, or entitled to, the property.

The accompanying bidding-paper (*n*) is to be carefully filled up.

The purchaser is to sign his name at the foot of the bidding-paper; and any person who purchases as agent for another must so sign: otherwise he must be treated as the purchaser.

The purchaser's Christian and surnames, address, and quality, are to be fully stated in the bidding-paper.

1129.

Note of the reserved bidding on a sale in one lot (*o*).

Commence as in No. 1005 *ante.*

The reserved bidding fixed by the Master of the Rolls [*Or*, Vice-Chancellor ——], to which the sale in this action [*Or*, matter] is to be subject, is the sum of £280.

R. M., Chief Clerk.

1130.

Bidding-paper in like case (*o*).

In the High Court of Justice,
Chancery Division.

B.

[*Short title of the action or matter.*]

This bidding-paper, marked B., was produced and shown to L. M., and is the same as is referred to in his affidavit sworn this —— day of ——, 187—, before me,

E. F., a commissioner, &c. [*or as may be: see ante* No. 696].

I, the undersigned G. H., of ——(*p*), bid at the sale by auction in the above action [*Or*, matter] on the —— day of ——, 187—, the sum of £300 for, and became the purchaser of, the property specified in the particulars produced at such sale, subject to the conditions also produced at such sale.

G. H

1131.

Affidavit of result of the sale, in like case (*q*).

[*Proceed as in* No. 1123 *ante, to* as follows.]

1. I did at the time and place, and subject to the conditions, specified in the particulars and conditions of sale, marked A., now produced and shown to me (*r*), put up for sale by auction, in one lot, the estate described in such particulars.

[*If a sale was effected, add:*] 2. The sum of £300 set forth in the bidding-paper, marked B., now produced and shown to me (*s*),

(*n*) See *post* No. 1130.

(*o*) See Dan. Pr. 1156, 1160; and *ante* No. 1107 (3).

(*p*) Insert the purchaser's name, address, and quality, at length.

(*q*) See Dan. Pr. 1160, 1161; and *ante* No. 1128.

(*r*) This exhibit is to be the print signed by the Chief Clerk; see *ante* Nos. 1116, 1120, 1123. For form of memorandum of exhibit, see *ante* No. 723.

(*s*) See *ante* No. 1130.

was the highest sum bid for the said estate; and G. H., whose name is subscribed to the said bidding-paper, was the highest bidder for, and became the purchaser of, the said estate, at the said sum of £300.

[*But if the highest bidding was below the reserve, say:*] 2. The sum of £250 was the highest sum bid for the said estate; and the said estate was therefore not sold: the said sum being less than the reserved bidding fixed by the said Judge.

[*Or, if there was no bidding whatever, say:*] 2. No person bid any sum whatever for the said estate.

[*In every case, add:*] 3. The said sale was conducted by me in a fair, open, and candid manner, and according to the best of my skill and judgment.

[*If a deposit was paid, add:*] 4. I have received from the said G. H. the sum of £30, as a deposit in respect of the said purchase-money of £300: leaving due from him, in respect of his said purchase money, the sum of £270.

Sworn [*&c.: see ante* No. 696].

1132. Chief Clerk's certificate of result of a sale in one lot, where there was a reserved bidding (*t*).

[*Proceed as in* No. 1124 *ante, to* directed to be sold,] have been offered for sale in one lot by public auction, with the approbation of the said Judge, subject to a reserved bidding fixed by the said Judge, and according to certain particulars and conditions of sale; and G. H., of [*&c.: as in bidding-paper*], was the highest bidder for, and he is allowed by the said Judge to be the purchaser of, the said estate at the price or sum of £300.

The said G. H. has paid the sum of £30, by way of deposit, to L. M., the person appointed by the said Judge to receive the same; and who is to pay such sum of £30 into Court to the credit of [*&c.; as in judgment or order directing the sale*], on or before the —— day of ——, 187—; and there is due from the said G. H., as the balance of his purchase money, the sum of £270.

The particulars of the hereditaments so sold as aforesaid are set forth in the schedule hereto [*or as may be: see ante* No. 1124 and note (*b*).]

The evidence produced, *&c.*

The schedule above referred to.

[*Set out the particulars of the property sold: as in the printed particulars of sale* (*u*).]

(*t*) See Dan. Pr. 1162; and notes to No. 1124 *ante*.

(*u*) See note (*b*) to No. 1124 *ante*.

1133.
Directions to the auctioneer as to the conduct of a sale in one lot without reserve (*v*).

Commence as in No. 1120 *ante.*

The sale is to be conducted in accordance with the accompanying printed particulars and conditions signed by the Chief Clerk (*w*). This print is to be carefully preserved, and returned to the Judge's Chambers: with the affidavit of the result of the sale (*x*).

The accompanying bidding-paper (*y*) is to be carefully filled up.

The purchaser is to sign his name [*Conclude as in* No. 1128 *ante*].

1134.
Bidding-paper in like case (*z*).

[*Same as* No. 1130 *ante.*]

1135.
Affidavit and Chief Clerk's certificate of result of the sale, in like case.

[*These forms can readily be prepared from* Nos. 1131 *and* 1132 *ante.*]

1136.
Summons that a party who bid without leave at a sale may be accepted as purchaser (*a*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that, notwithstanding the applicant had not obtained leave to bid at the sale on the —— day of ——, 187—, of the estates directed to be sold by the judgment [*Or*, order] dated the —— day of ——, 187—, he may be certified to be the purchaser of the said estates [*Or*, of lot —— of the said estates] at the sum of ——: the price at which he was declared to be the highest bidder for the said estates [*Or*, lot] at such sale.

1137.
Summons to compel payment in of deposits received at the sale (*b*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that L. M., in the Chief Clerk's certificate [*Or*, in the order] dated the —— day of ——, 187—, named, may be ordered, on or before the —— day of ——, 187—, or within seven days after service, to pay the sum of £——: appearing by the said certificate [*Or*, order; *Or*, by the affidavit of E. F., filed the ——, 187—] to have been received by him as deposits from the purchasers therein named, on the lots therein mentioned [*or as may be*]: into Court to the credit of [*&c.; as in*

(*v*) See Dan. Pr. 1160; and notes to No. 1120 *ante.*
(*w*) See *ante* No. 1116.
(*x*) See *ante* No. 1123; and *post* No. 1135.
(*y*) See *ante* No. 1130; and *post* No. 1134.
(*z*) See Dan. Pr. 1165; and *ante* No. 1130.
(*a*) See Dan. Pr. 1160.
(*b*) *Ibid.*, 1162. For order in like case, see Seton, ed. 3, 1188, No. 5. For the mode of enforcing the order, see *post*, note (*a*) at p. 687.

judgment or order directing the sale]. And that the said L. M. may be ordered to pay the costs of this application.

1138. Summons to vacate recognizance, or pay out security fund, for deposits (*c*).

Formal parts : see ante No. 881.
on the part of the plaintiff [*or as may be*], that the recognizance dated the —— day of ——, 187—, entered into by L. M., together with C. D. and E. F. as his sureties, may be vacated.

Or, that the £——, cash [*Or*, £——, consolidated £3 per cent. annuities ; *or as may be*] in Court to the credit of [*&c. : state what ; see* No. 1119 *ante*], may be paid [*Or*, transferred] to the said L. M.

1139. Summons to proceed with the sale of unsold lots (*d*).

Formal parts : see ante No. 881.
on the part of the plaintiff [*or as may be*], to proceed with the sale of the unsold portions of the real estates of the testator [*or as may be*] directed to be sold by the judgment [*Or*, order] dated the —— day of ——, 187—.

1140. Particulars and conditions of a sale by tender of partnership property together with the goodwill (*e*).

In the High Court of Justice,
Chancery Division.

[*Short title of the action or matter, and reference to the record.*]

PARTICULARS AND CONDITIONS OF SALE

of extensive and newly-built freehold warehouses, cottages, offices, land and premises, situate at W., in the county of Y., with a water frontage to the D. canal of 97 feet : together also with the goodwill of the extensive and old established business of wine and spirit merchants, for many years carried on by the late well-known firm of E. F. & Co., upon the said premises ; and also all the excellent

(*c*) See Dan. Pr. 1163. The application must be supported by production of an office copy of the Chief Clerk's certificate of the result of the sale, and of the recognizance where given ; and the Paymaster-General's certificate of the payment into Court of the deposit, if any, and, in the case of a security fund, of such fund being in Court. A separate application for this order is unusual : as an opportunity will generally occur for engrafting it on some other application in the suit ; see Dan. Pr. 1163, note (*s*). Where the recognizance has not been enrolled, no order to vacate the enrolment is, of course, necessary, but the recognizance will be delivered out, on production of office copies of the certificates above mentioned ; *Ibid.* For the mode of obtaining money out of Court, see *post*, note (*b*) to No. 2030 ; and for the mode of obtaining a transfer of stock out of Court, see *post*, note (*q*) to No. 2037.

(*d*) See Dan. Pr. 1163. For the practice as to a re-sale, see *Ibid.*

(*e*) This form follows the particulars and conditions used in *Johnson* v. *Helleley*, 34 Beav. 63 ; 2 De G. J. & S. 446. As to sales by tender, see Dan. Pr. 1153, 1163. For forms of particulars and conditions, on an ordinary sale by public auction, see *ante* Nos. 1105, 1107, 1108, and notes thereto.

trade fixtures and other conveniences for carrying on an extensive business :

To be sold, in one lot, by private tender, by order of his lordship the Master of the Rolls.

The purchaser is also to take at a valuation : to be made in the mode directed by the conditions of sale hereto annexed, subject to which the said property is sold : all the large, valuable, and carefully selected stock of wines, spirits, &c., now belonging to the said firm ; and also, at a sum already fixed by the Master of the Rolls, certain book debts due and owing to the said firm : the amount whereof due on the —— day of ——, 18—, may be ascertained upon reference to the solicitors named below ; and the amount whereof due since that day is to be ascertained as provided by the 5th condition of sale.

The sale will give to the purchaser both the premises in which the business has been carried on and the benefit to be derived from the habits of the customers resorting to such premises ; but it will not prevent any of the persons heretofore interested in the business, or those who may represent them, from carrying on the like business.

Tenders to be sent (in a sealed cover) to the Chief Clerk of the Master of the Rolls, at his Chambers, situate, &c., not later than the —— day of ——, 18—.

Particulars, plans, conditions of sale, and forms of tender may be obtained, gratis, of Messrs. S. & B., solicitors, at S. ; of Messrs. T. & H., solicitors, at *&c.*, *&c.*

The premises may be viewed, and approximate catalogues of the stock obtained, on application to the said Messrs. S. & B., *&c. &c.*

CONDITIONS OF SALE.

(1). Reserved bidding.

1. The sale is subject to a reserved bidding : which has been fixed by the Judge to whom the action is attached.

(2). Service on purchaser.

2. The abstract of title, and all written notices, communications, and summonses, are to be deemed duly delivered to and served upon the purchaser, by being left for him at the address mentioned in the tender : unless and until he is represented by a solicitor.

(3). Deposit.

3. The purchaser is, within two days after the acceptance of his tender, to pay a deposit of £10 per cent. on the amount of his purchase money into the London and Westminster Bank, Bloomsbury Branch, to the credit of F. J. D., of, *&c.*, and E. W., of, *&c.*, as appointed by the Judge.

(4). Certifying result of sale.

4. The Chief Clerk of the Master of the Rolls will, after the sale, proceed to certify the result ; and ——, the —— day of ——, 18—, at twelve o'clock at noon, is appointed as the time at which the bidders may, if they think fit, attend in person or by their solicitors at the Chambers of the said Judge, situate at, *&c.*, to settle such certificate. The certificate of sale (if any) will then be settled and

will, in due course, be signed and filed and become binding, without further notice or expense to the purchaser.

(5). Book Debts: how to be taken.

5. The book debts due to the late partnership on the —— day of ——, 18—, are to be taken by the purchaser at a sum fixed by the Judge; and which may be ascertained upon application to any of the before-named solicitors. The book debts accrued due to the said partnership since the said —— day of ——, 18—, shall be taken to by the purchaser, and the amount to be paid by him in respect thereof shall be ascertained by the said Judge in Chambers, or as he shall direct; and in ascertaining such amount, regard will be had to any of the last-mentioned debts which may have been got in since that day. The purchaser shall also have credit for the value at which the Chief Clerk of the said Judge has estimated any of the debts due on the said —— day of ——, 18—, which may have been got in before the completion of the purchase.

(6). Ascertaining value of fixtures, &c.

6. The value of the fixtures, wines, spirits, &c., mentioned in the particulars: which are to be taken at a valuation: shall be ascertained as follows:—Each party (the vendors acting by Messrs. S. & B., their solicitors, and the purchaser by his solicitor) is, within ten days after the Chief Clerk's certificate has become binding, to appoint [*Continued as in paragraph* 7 *of* No. 1107, *ante, to the end of that paragraph; and concluded thus:*] In case the said valuers cannot agree upon an umpire, an umpire is to be appointed by the Master of the Rolls in Chambers.

[7—13. *Here followed special conditions, applicable to the title to the freehold property; see ante* No. 1108.]

(14). Payment of purchase money.

14. The purchaser is, under an order for that purpose to be obtained by him, or, in case of his neglect, by the vendors at the costs of the purchaser, upon application at the Chambers of the Judge, to pay the remainder of his purchase money into Court, to the credit of [*&c.; as in judgment or order directing the sale*], within fourteen days after the date of the valuations to be made as mentioned in the 6th condition; and if the same is not so paid, then the purchaser is to pay interest on the remainder of his purchase money, at the rate of £5 per cent. per annum, from the date of such valuation, to the day on which the same is actually paid: deducting property tax. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession as from the date of such valuation, down to which time all outgoings are to be paid by the vendors; and for the purpose of this condition, such outgoings, if the circumstances so require, shall be apportioned. And the purchaser is to be considered as entitled to the said business, and subject to the engagements thereof, as from the date of the said valuation; and the amount coming or being due to or from him in respect thereof as from that day is to be ascertained. In so ascertaining the same, such allowance as may be deemed proper in respect of the management thereof, as from the date of such valuation, is to be made; and

Possession, &c.

the said Judge shall determine any differences which may arise in reference to this condition, including the determining by, and to whom, and when and how, any sum is to be payable thereunder.

(15). Resale on default.

LASTLY. If the purchaser shall not pay [*&c.: as in* No. 1007 (10) *ante*].

1141.

Advertisement of a sale by tender (*f*).

To be sold by private tender, pursuant to a judgment [*Or*, an order] of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], made in an action J. *v.* H. [*or as may be*], all [*Describe the property shortly; see ante* Nos. 1105 (1), 1140].

Tenders are to be sent to the Chief Clerk of the Master of the Rolls [*Or*, Vice-Chancellor ——], at his Chambers, situate in the Rolls' Yard, Chancery Lane, London [*or as may be*], not later than ——, the —— day of ——, 187—.

Particulars and conditions of sale and forms of tender may be obtained gratis of [*Conclude as in* No. 1105 (1) *ante*].

1142.

Form of tender (*g*).

In the High Court of Justice,
Chancery Division.
[*Short title of the action or matter.*]

I, the undersigned A. B., of [*residence and addition*], do hereby tender for, and agree to purchase, subject to the approval of the Master of the Rolls [*Or*, the Vice-Chancellor ——], at the sum of £——, the property comprised in the [*Or*, in lot one, *&c.*, of the] within particulars of sale, and upon the terms and conditions within mentioned, and subject to the conditions of sale within contained.

A. B.

Witness to the signature of the said A. B.,
C. D., of [*residence and addition*].

1143.

Certificate of the result of a sale by tender (*h*).

[*The certificate is in the same form as the certificate of the result of a sale by public auction: see ante* Nos. 1124, 1132; *except that the property is stated to have been offered for sale by tender, and*

(*f*) See Dan. Pr. 1163. For form of advertisement of a sale by public auction, see *ante* No. 1112; and see note to that form.

(*g*) See Dan. Pr. 1163. The tender should be written in the fold of a print of the particulars and conditions of sale. A printed form of tender is usually circulated with the particulars and conditions.

(*h*) See Dan. Pr. 1163.

the person allowed the purchaser is stated to have tendered the highest sum.]

1144. Summons for delivery of an abstract of title (*i*).

Formal parts: see ante No. 881.
on the part of A. B.: who by the Chief Clerk's certificate [*Or*, by the order] dated the ——, 187—, has been allowed the purchaser of (lot —— of) the estates directed to be sold by the judgment [*Or*, order], dated the ——, 187—: that the plaintiff [*or other person having the conduct of the sale*] may be ordered, on or before the ——, 187—, to deliver to the applicant, or to Mr. C. D., of [*place of business*], his solicitor, an abstract of the title to the said lot [*Or*, estates], pursuant to the (6th) of the conditions of sale; and that the said plaintiff [*or other person having the conduct of the sale*] may be ordered to pay to the applicant his costs of this application.

1145. Summons by the purchaser for leave to pay his purchase money into Court (*j*).

Formal parts: see ante No. 881.
on the part of A. B.: who [*Describe the purchaser: as in* No. 1144 *ante*]:

1. That the applicant, being content with the title, may, on or before the —— day of ——, 187—, pay into Court, to the credit of [*&c.; as in the judgment for order or sale*], the sum of £——: being the purchase money for the said premises.

Or, being the balance of the purchase money for the said premises, after deducting £—— paid by him as a deposit.

[*If so:*] and the further sum of £——: being the amount of the valuation of the timber: making together the sum of £——.

[*If so:*] together with £——, for interest on the said £——, at £(5) per cent. per annum, from the ——, 187—, to the ——, 187—: deducting property tax (*k*).

[*Or*,

(*i*) See Dan. Pr. 1155, 1156, 1164; and *ante* No. 1107 (6).

(*j*) See Dan. Pr. 1157, 1164, 1168; *ante* No. 1107 (8); and *post* Nos 1146, 1148. For orders in like case, see *Alderson* v. *Jones*, M. R. at Chambers, 3 June, 1870, Reg. Lib. A. 1303; and Seton, ed. 3, 1192; and for payment in by instalments, see Seton, ed. 3, 1198. The summons must be supported by production of the judgment or order directing the sale, an office copy of the Chief Clerk's certificate of the result of the sale, or the order confirming a conditional contract of sale, the conditions or contract of sale, and the valuation of the timber, if any; see Dan. Pr. 1168.

(*k*) The ordinary conditions of sale provide for deduction of the property tax

Or, together with interest on the said £——, at £(5) per cent. per annum, from the ——, 187—, till payment (the amount to be verified by affidavit (*k*)).

2. That, upon such payment being made, the applicant may be let into possession of the said premises, or into the receipt of the rents and profits thereof, from the ——, 187— (*l*); and that all proper parties may be ordered to join in and execute a proper conveyance or assurance of the premises to the applicant, or as he shall direct (*m*): such conveyance or assurance to be settled by the Judge in case the parties differ (*n*).

3. That the said sum of £—— (and interest) may not be paid out without notice to the applicant (*o*).

1146.

Summons by separate purchasers for leave to pay in their purchase moneys under one order (*p*).

Formal parts: see ante No. 881.

on the part of A. B., C. D., and E. F.: in the first column of the schedule hereto respectively named; and who by the Chief Clerk's certificate [*Or*, by the order] dated the —— day of ——, 187—, have respectively been allowed the purchasers of the hereditaments comprised in the respective lots, the numbers of which are set opposite their respective names in the second column of the said schedule, being parts of the estates directed to be sold by the judgment [*Or*, order] dated the —— day of ——, 187—: that the applicants, being respectively content with the title to their respective lots, may, on or before the —— day of ——, 187—, pay into Court, to the credit of [*&c.; as in the judgment or order for sale*], the several sums of money set opposite their respective names in the last column of the said schedule: such sums being the amounts of the balances of their respective purchase moneys for the lots so purchased by them.

[*If so:*] after making the additions and deduction specified in the 4th, 5th, and 7th columns of the said schedule.

from the interest; see *ante* No. 1107 (8). As to the right of the purchaser to such deduction in the absence of condition, see Dan. Pr. 1169.

(*k*) See Chan. Funds Cons. Rules, 1874, rules 8, 10, 86. For form of affidavit, see *post* No. 1147.

(*l*) See Dan. Pr. 1170, 1171; and *ante* No. 1107 (8).

(*m*) See Dan. Pr. 1164, 1182; Cons. Ord. XXXV. 13.

(*n*) As to when the words "in case the parties differ," should be omitted, see Dan. Pr. 1147. As to the conveyance, and delivery of title deeds, see *post* Nos. 1152—1159.

(*o*) See Dan. Pr. 1176, 1177. As to a direction to invest, which is usually made part of the order on the summons; see Dan. Pr. 1169. As to giving notice of the restraint to the Paymaster-General, see *Ibid.*, 1176.

(*p*) See Dan. Pr. 1169, and notes to No. 1145 *ante*. For orders in like case, see *Poole* v. *Barker*, M. R. at Chambers, 6 March, 1867, Reg. Lib. B. 458; *Alderson* v. *Jones*, M. R. at Chambers, 3 June, 1870, Reg. Lib. A. 1367; and see Seton, ed. 3, 1193, No. 2.

2. That upon such payments respectively being made, the applicants respectively may be let into possession of the premises comprised in the respective lots so purchased by them respectively, or into the receipt of the rents and profits thereof, as from the ——, 187—; and that all proper parties may be ordered to join in and execute proper conveyances and assurances of the said respective premises to the applicants respectively, or as they shall direct: such conveyances and assurances respectively to be settled by the Judge, in case the parties differ (*q*).

3. That the said sums respectively may not be paid out without notice to the respective applicants paying such respective sums into Court as aforesaid.

The schedule above referred to.

Name of purchaser.	No. of Lot.	Purchase money.	Deposit paid.	Valuation of timber.	Balance of purchase money added to valuation of timber.	Interest thereon from —, 187—, to —, 187—, at £5 per cent. (deducting property tax).	Amount to be paid into Court.
		£	£	£	£	£	£
A. B. . .	1	900	90	20	830	30	860
C. D. . .	2	750	75	18	693	25	718
E. F. . .	3	300	30	10	280	10	290

1147. Affidavit of amount of interest to be paid in by purchaser (*r*).

Formal parts: see ante No. 881.

1. Interest at the rate of £(5) per cent. per annum from the —— day of ——, 187—, to the —— day of ——, 187—, on the sum of £——, (balance of) purchase money,

[*If so:*] and valuation of timber,

in the order in this action [*Or*, matter], dated the —— day ——, 187— (*s*), mentioned, amounts (after deducting property tax) to the sum of £——, and no more: as I know from having computed such interest.

2. The said sums of £—— and £—— make together the sum of £——.

(*q*) See No. 1145 note (*n*).

(*r*) See Chan. Funds Cons. Rules, 1874, rules 8, 10, 86; and see Dan. Pr. 1168.

(*s*) Order to pay in purchase money and interest; see *ante* No. 1145.

1148.
Summons for leave to pay in purchase money without prejudice (*t*).

Formal parts: see ante No. 881.
on the part of A. B.: who [*Describe the purchaser: as in* No. 1144 *ante*]: that, without prejudice to any question as to the title to the said premises, the applicant may, on or before the ——, 187—, pay into Court [*Proceed as in* No. 1145, *to the end of clause* 1; *and add clause* 3].

1149.
Further summons to be let into possession, in like case (*u*).

Formal parts: see ante, No. 881.
on the part of A. B.: who [*Describe the purchaser: as in* No. 1144 *ante*]: that the applicant, having paid into Court to the credit of *&c.*, the sum of £—— for the purchase money and interest for the said lot [*Or,* estates], pursuant to the order dated the ——, 187—, and now being content with the title to the premises, may be let into the possession of the said premises, or into the receipt of the rents and profits thereof [*Continue as in* No. 1145, *clause* 2, *to the end of that clause*].

1150.
Summons by purchaser for allowance of compensation out of his purchase money and to pay in the residue (*v*).

Formal parts: see ante No. 881.
on the part of A. B.: who [*Describe the purchaser: as in* No. 1144 *ante*]:

1. That out of his purchase money for the said premises, the sum of £—— may be allowed to him as compensation [*State ground of application; as thus:*]
by reason of the said premises being described in the particulars of sale thereof as let on an agreement for —— years from the ——, 187—, at an annual rent of £50; whereas the rent reserved by the said agreement is only £45 per annum.

2. [*If the purchaser is ready to pay in the balance, add:*] That the applicant, being content with the title, may, on or before the ——, 187—, pay into Court to the credit of [*&c.; as in the judgment or order for sale*], the sum of ——, being the residue of the said purchase money, after deducting the said £—— for such compensation [*If so:*] and after deducting £—— paid by him as a deposit [*Continue as in* No. 1145 *ante, to the end*].

(*t*) See Dan. Pr. 1170; and *ante* No. 1107 (8). As to the right of the purchaser to pay in his purchase money without prejudice, see Dan. Pr. 1169.
(*u*) *Ibid.*, 1170.
(*v*) *Ibid.*, 1156, 1170; and *ante* No. 1107 (8, 9). As to compensation, see Dan. Pr. 1170.

1151. Summons by the vendor for payment of compensation by the purchaser (*w*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*or other person having the conduct of the sale; see ante* No. 1104]: that A. B.: who by the Chief Clerk's certificate [*Or*, by the order], dated the ——, 187—, has been allowed the purchaser of (lot —— of) the estates directed to be sold by the judgment [*Or*, order] dated the ——, 187—: may be ordered, in addition to his purchase money for the said premises, to pay, in such manner as the Judge shall direct, the sum of £——

Or, such amount as the Judge shall settle,

as compensation [*State ground of application; as thus:*]
by reason of the said premises being described in the particulars of sale as containing by admeasurement 10a. 3r. 24p.: instead of 12a. 2 r. 11p.

1152. Summons to compel purchaser to leave draft conveyance (*y*).

[*Proceed as in* No. 1151 *ante, to* may be ordered; *and continue thus:*]
on or before the ——, 187—, or within four days after service, to leave at my Chambers the draft of the conveyance to him of the said premises: to the intent that such draft may be settled by me pursuant to the order dated the ——, 187—.

1153. Summons by purchaser to compel return of draft or engrossment of conveyance (*z*).

Formal parts: see ante No. 881.
on the part of A. B.: who [*Describe the purchaser: as in* No. 1144 *ante*]: that the plaintiff [*or other party retaining the draft or engrossment*] may be ordered, on or before the ——, 187—, to leave in my Chambers the draft [*Or*, engrossment] of the conveyance to the applicant directed to be settled and executed by the order, dated the ——, 187—.

1154. Settlement of conveyance (*a*).

[*See ante* Nos. 1092 *to* 1099.]

(*w*) See *ante* No. 1150, note (*v*).

(*y*) See Dan. Pr. 1173; and *ante* No. 1145. For order in like case, see *Leach* v. *Westhall*, V.-C. M. at Chambers, 18 Mar. 1870, Reg. Lib. B. 732. As to the preparation of the conveyance, and the parties thereto, see Dan. Pr. 1172. As to the settlement of the draft of the conveyance at Chambers, see Dan. Pr. 1146, 1173.

(*z*) See Dan. Pr. 1173.

(*a*) *Ibid.*, and notes to Nos. 1092 to 1099 *ante*. The engrossment should be stamped, before being left at Chambers; Dan. Pr. 1173, note (*t*). As to the stamp duties on conveyances, see the Stamp Act, 1870 (33 & 34 Vict. c. 97), sched. As to searching for incumbrances, see *ante* No. 1019, and notes thereto.

1155. Summons that a party to the purchaser's conveyance may be ordered to execute the same (*b*).

Formal parts: see ante No. 881.

on the part of A. B.: who [*Describe the purchaser: as in* No. 1144 *ante*]: that the plaintiff C. D. [*or as may be*] may be ordered, within four days after service, to join in and execute the indenture of conveyance in the Chief Clerk's certificate, dated the —— day of ——, 187—, mentioned: being a conveyance of the said premises to the applicant, which has been settled pursuant to the order dated the —— day of ——, 187—; and that the said C. D. may be ordered to pay the costs of and incident to this application.

1156. Summons by purchaser, to pay in his purchase money, and for the appointment of a person to convey to him (*d*).

[*Proceed as in* No. 1145 *ante, to end of clause* 1.]

2. That, upon such payment being made, the applicant may be let into possession of the said premises, or into the receipt of the rents and profits thereof, from the ——, 187—.

3. That C. D., of [*residence and addition*], may be appointed to convey the said premises to the applicant, or as he shall direct, for the estate of the infant defendant E. F. [*or as may be*] therein (*e*): the conveyance or assurance thereof to be settled by the Judge [*Add, when applicable (ee):*] in case the parties differ.

4. That forthwith after payment in of the said sum of £—— as aforesaid, the said C. D. may convey the said premises accordingly.

5. That the said sum of £—— may not be paid out without notice to the applicant.

1157. Summons by purchaser, to pay in his purchase money, and for a vesting order (*f*).

[*Proceed as in* No. 1156 *ante, to the end of clause* 2.]

3. That forthwith after the payment in of the said sum of £—— as aforesaid the said premises may vest in the applicant for the estate of the infant defendant E. F. [*or as may be*] therein.

4. That the said sum of £—— may not be paid out without notice to the applicant.

1158. Summons for delivery by the Record and Writ Clerk of documents to a purchaser (*g*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that the deeds and writings specified in the schedule hereto, being the [*Or*, part of

(*b*) See Dan. Pr. 1173, and *ante* No. 1145. For the mode of enforcing the execution of the conveyance to a purchaser, see Dan. Pr. 1174, 1175.

(*d*) See Dan. Pr. 1173, 1174; and notes to No. 1145 *ante*. As to vesting orders, and orders appointing persons to convey, under the Trustee Acts, 1850, and 1852 (13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55), see Dan. Pr. 1174; *Ibid.*, 1816, 1817, and *post* Nos. 2192, 2193. For order in like case, see Seton, ed. 4, 534, No. 16.

(*e*) In addition to the evidence required on an ordinary application to pay in; as to which, see *ante* No. 1145, note (*j*); evidence must be produced to show that the estate is vested as alleged, and the grounds on which the order is sought; Dan. Pr. 1175.

(*ee*) See Dan. Pr. 1147.

(*f*) See the notes to No. 1156 *ante*. For order in like case, see *Irons* v. *Blyton*, M. R. at Chambers, 21 Nov. 1866, Reg. Lib. A. 2520; and Seton, ed. 4, 534, No. 16. As to the stamp duty on a vesting order, see the Stamp Act, 1870 (33 & 34 Vict. c. 97), sched.; and Dan. Pr. 1175, note (*l*).

(*g*) See Dan. Pr. 1176. For orders in like case, see *Cross* v. *Maltby*, V.-C. K.

the] documents deposited with the Clerk of Records and Writs [*Or*, with the Registrar of the District Registry at ——] by the defendant C. D. [*or as may be*] under an order dated the ——, 187—, may be delivered out to A. B., a purchaser under the judgment [*Or*, order], dated the —— day of ——, 187—, of the [*Or*, part of the] estates to which the said deeds and writings relate, or to whom he shall appoint.

The schedule above referred to.

[*Describe the documents, as in order or affidavit of deposit.*]

1159. Petition of course for the like by consent (*h*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Pursuant to an order in this action [*Or*, matter], dated the —— day of ——, 187—, the defendant C. D. [*or, as may be*] deposited in the office of the Clerk of Records and Writs certain documents therein specified [*Or*, specified in his affidavit filed in this action [*Or*, matter] on the —— day of ——, 187—].

2. On a sale made pursuant to the judgment [*Or*, an order] in this action [*Or*, matter], dated the —— day of ——, 187—, A. B., of [*residence and addition*] has, by the Chief Clerk's certificate [*Or*, by an order], dated the —— day of ——, 187—, been allowed the purchaser of certain hereditaments to which the said documents relate; and his purchase money for the same has been paid into Court, to the credit of this action [*or as may be*].

3. The said A. B., as such purchaser, is now entitled to all the said documents.

Or, to such of the said documents as are specified in the schedule hereto.

Your petitioner therefore humbly prays that, by consent (*i*), all the documents specified in the said order [*Or*, affidavit],

Or, such of the documents specified in the said order [*Or*, affidavit] as are particularised in the schedule hereto,

and so deposited as aforesaid, may be delivered out to the said A. B., or to whom he shall appoint.

And your petitioner will ever pray, &c.

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at Chambers, 9 Feb. 1864, Reg. Lib. A. 354; *Warren* v. *Rudall*, V.-C. W. at Chambers, 18 Dec. 1865, Reg. Lib. B. 2432; and Seton, ed. 4, 168, No. 1. In *Matsom* v. *Dennis*, V.-C. S. at Chambers, 6 Dec. 1869, Reg. Lib. B. 3226, a like order was made on summons, on the application of plaintiff and appearance of the defendant who deposited and of the purchaser; on the latter undertaking, whenever required by purchasers of other lots under the judgment, to execute to them, at their expense, such covenants for production of the documents, or any of them, as they were entitled to under the conditions of sale.

(*h*) See *ante* No. 1158, note (*g*).

(*i*) For form of consent, see *post* No. 1577.

1160.
Acknowledgment by purchaser of receipt of his conveyance, and consent to purchase money being dealt with (*j*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

I, A. B., the purchaser of the [*Or*, of lot —— of the] estates directed to be sold by the judgment [*Or*, order] in this action [*Or*, matter] dated the —— day of ——, 187—, hereby admit that I have received the conveyance to me of the premises so purchased by me. And I consent to the distribution or application of my purchase money for the said premises, in any manner the High Court of Justice may direct. And I authorise Mr. C. B., the solicitor of the plaintiff [*or other party having the conduct of the cause*], to appear in person or by counsel, and consent on my behalf to such distribution or application being made: on condition that I am not made responsible to any person for the costs of such appearance and consent. Dated this —— day of ——, 187—. A. B.

Witness to the signature of the said A. B.
C. A., of [*residence and addition*].

1161
Notice to purchaser of intention to deal with his purchase money (*j*).

Formal parts: see ante No. 21.

Take notice that [*State the proceeding about to be taken; as thus:*]

this action, the further consideration whereof was adjourned by the order therein dated the ——, 187—, was on the ——, 187—, set down for further consideration before his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], for the —— day of ——, 187—;

and that, on the said hearing on further consideration [*or as may be*], your purchase money for the premises purchased by you under the judgment [*Or*, order] in this action dated the ——, 187—, and which has been paid into Court to the credit of this action [*or as may be*], will be dealt with in such manner as the Court may direct.

1162.
Affidavit of service thereof and that the purchaser has had his conveyance (*j*).

Formal parts: see ante No. 693.

1. [*Prove service of the notice: see ante* No. 741.]

2. The conveyance to the said A. B., of the hereditaments purchased by him as aforesaid, has, pursuant to the order of the —— day of ——, 187—, been executed and delivered to him: as I know from [*State means of knowledge*].

1163.
Summons for the discharge of purchaser's restraint on fund (*k*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that so much of the order dated the —— day of ——, 187—, as directs that the sum

(*j*) See Dan. Pr. 1177.
(*k*) *Ibid.*, 1178. For order in like case, see *Bouquet* v. *Waller*, V.-C. K. at

of £—— therein mentioned is not to be paid out except for the purchase of annuities, and that such annuities are not to be sold, transferred, or otherwise disposed of, without notice to A. B., the purchaser therein named,

[*If so :*] and the entry of such order in the books of the Paymaster-General,

may be discharged.

1164. Affidavit in support of summons to discharge purchaser's restraint on fund (*l*).

Formal parts : see ante No. 693.

1. [*Prove that the purchaser has had his conveyance : see ante* No. 1162.]

2. [*Prove service of the summons : see ante* No. 885.]

1165. Summons by purchaser for leave to pay off incumbrance out of his purchase money (*l*).

Formal parts : see ante No. 881.

on the part of A. B. : who [*Describe the purchaser : as in* No. 1144 *ante*] :

1. That upon L. M., of [*residence and addition*], the mortgagee of the said premises, under and by virtue of an indenture of mortgage dated the —— day of ——, 187—, made between the testator C. D. of the one part, and the said L. M. of the other part, duly executing the conveyance of the said premises to the applicant, or as he may direct, the applicant may be at liberty, out of his purchase money for the said premises, to pay to the said L. M. the principal sum of £——, due to him on his said mortgage security, together with interest thereon at £— per cent. per annum from the ——, 187—, until payment ; and also the costs of the said L. M. as mortgagee : such costs to be taxed by the Taxing Master.

2. That the applicant may, within seven days after the date of the Taxing Master's certificate, pay into Court to the credit of [*&c. ; as in the judgment or order directing the sale*], the residue of his purchase money, after deducting the amount paid to the said L. M.

[*If so :*] and after deducting £—— paid by the applicant as a deposit [*Continue as in* No. 1145 *ante, to the end*].

1166. Summons by purchaser for leave to keep incumbrance on foot and pay in residue of purchase money (*m*).

[*Proceed as in* No. 1165 *ante, to* other part ; *and continue thus :*] waiving all claims and demands against the estate of the said testator, and his real and personal representatives, under or in consequence of the said indenture, in respect of the principal sum of £—— now due to him on the security thereof, and of all interest

Chambers, 12 Dec. 1865, Reg. Lib. A. 50 ; and see Seton, ed. 4, 303, Nos. 13, 14. Where the restraining order has been entered in the Paymaster-General's books as a stop order, the discharging order, or an office copy, must be entered there also ; Dan. Pr. 1178.

(*l*) See Dan. Pr. 1178.

(*m*) *Ibid.* For order in like case, see Seton, ed. 3, 1202.

or other moneys due, or to become due, in respect thereof, and agreeing that, as between the said L. M. on the one hand, and the real and personal representatives of the said testator on the other hand, the premises comprised in the said indenture shall be deemed to be the only security for the repayment of the said principal, interest, and other moneys, the applicant may, on or before the ——, 187—, pay into Court, to the credit of [*&c.; as in the judgment or order directing the sale*], the sum of £——, residue of £——, his purchase money for the said premises, after deducting the said principal sum of £——, and £——, the proportion of the accruing interest thereon, and £——, the proportion to be borne by the testator's estate of the costs of the said L. M., in respect of the said security; and after deducting £—— paid by the applicant as a deposit [*Continue as in* No. 1145 *ante, to the end; but add, after the direction to convey:* subject nevertheless to the said indenture of mortgage, and the moneys thereby secured].

1167.

Petition to pay off incumbrance out of purchase money in Court (*n*).

Formal parts: see post No. 1578.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. This is an action for the administration of the real and personal estate of X. Y., at the instance of creditors [*or as may be*].

2. By the judgment made in this action, dated the —— day of ——, 187—, the usual accounts and inquiries were directed to be taken and made: including inquiries what real estate the testator was seised of, or entitled to, at the time of his death; what incumbrances affected the same; and what were their priorities; and an account of what was due to such of the incumbrancers, if any, as should consent to the sale thereby directed, in respect of their incumbrances; and the said judgment also directed a sale of the said real estate [*Continue recital of the direction to sell*].

3. By the certificate of R. M., esquire, the Chief Clerk of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], the Judge to whom this action is attached, dated the —— day of ——, 187—, and filed the —— day of ——, 187—, and which became binding on the —— day of ——, 187—, he, in pursuance of the said judgment, certified that the real estate which the said testator was seised of, or entitled to, at the time of his death, consisted of the particulars set forth in the (fourth) schedule to the said certificate; and that the only incumbrance affecting the said real estate was a mortgage created by an indenture dated the —— day of ——, 187—, made between the said testator, of the one part, and L. M., of [*residence and addition*], of the other part: that there was due to the said L. M., on the security of the said

(*n*) See Dan. Pr. 1178. For order in like case, see Seton, ed. 3, 1200.

indenture, the principal sum of £——, and the sum of £—— for an arrear of interest thereon at the rate of £5 per cent. per annum, to the date of the said certificate; and that the said L. M. had consented to the said real estate being sold free from his said incumbrance, on the terms of the said judgment [*or as may be*].

4. By another certificate of the said Chief Clerk, dated [*&c., as above*], he further certified, in pursuance of the said judgment, that the said real estate had been sold by public auction, in one lot, with the approbation of the Judge; and that A. B. had been allowed the purchaser thereof at the sum of £——.

5. Pursuant to the said judgment, and to an order made in this action dated the —— day of ——, 187—, the said A. B., on the —— day of ——, 187—, paid his purchase money of £——, with £—— for interest thereon, making together £——, into Court, to the credit of, *&c.;* and the same is now represented by £——, consolidated £3 per cent. annuities in Court to the like credit.

6. There is now due to the said L. M., upon and by virtue of his said mortgage security, the sum of £—— for principal, and £—— for an arrear of interest thereon to the —— day of ——, 187—; and your petitioner is desirous that the same should be raised and paid out of the said annuities.

Your petitioner therefore humbly prays:

1. That the costs of the said L. M., as mortgagee, may be taxed.

2. That upon production of an affidavit that the said L. M. has duly executed and delivered to the said A. B. a conveyance of the said mortgaged premises, free from the aforesaid incumbrance of the said L. M., the principal money and interest due to the said L. M. on his said mortgage security, including interest to the fourth day after bespeaking the sale hereby prayed (the amount of such interest to be verified by affidavit), and also the taxed costs of the said L. M., may be raised by a sale of a sufficient part of the said £——, consolidated £3 per cent. annuities, and paid to the said L. M.

Or that [*Conclude as in* No. 1578; *and add foot note,* No. 1579].

1168. Summons to pay off incumbrance out of purchase money in Court (*o*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*]:

1. That the costs of L. M., as mortgagee, may be taxed.

2. That upon production of an affidavit that the said L. M. has executed and delivered to A. B.: who, by the Chief Clerk's certi-

(*o*) See Dan. Pr. 1178.

ficate [*Or*, by the order] dated the ——, 187—, has been allowed the purchaser of the premises therein mentioned: a conveyance of the said premises, free from the mortgage thereon of the said L. M. for £—— and interest created by indenture dated the ——, 187—, in the Chief Clerk's certificate dated the ——, 187—, mentioned [*or as may be*], the sum of £——, being the principal money due to the said L. M. on his said incumbrance, and also interest thereon at the rate of £— per cent. per annum, from the ——, 187—, to the fourth day after bespeaking the sale (the amount of such interest to be verified by affidavit), and also the taxed costs of the said L. M., may be raised by a sale of a sufficient part of the £——, consolidated £3 per cent. annuities in Court to the credit of [*State what, as in Paymaster-General's certificate*], and representing the purchase money of the said A. B. for the said premises [*or as may be*].

3. That out of the money so raised the amount of the said principal money, interest, and costs may be paid to the said L. M.

1169. Summons to compel payment in of the purchase money, and for a re-sale on default (*p*).

[*Proceed as in* No. 1151 *ante, to* may be ordered; *and continue thus:*]

on or before the ——, 187—, or subsequently within seven days after service, to pay into Court, to the credit of [*State what, as in the judgment or order for sale*], the sum of £——: being the purchase money for the said premises;

Or, being the balance of the purchase money for the said premises, after deducting £——, paid by him as a deposit:

[*If so:*] and the further sum of £——: being the amount of the valuation of the timber on the said premises; making together the sum of £——:

[*If so:*] together with interest thereon at £— per cent. per annum from the ——, 187— [*as in the conditions or contract of sale*], until payment (the amount of such interest to be verified by affidavit).

2. That upon such payment being made, the said A. B. may be let into possession of the said premises, or into the receipt of the rents and profits thereof, from the ——, 187—; and that all proper directions for the conveyance or assurance of the said premises to him may be given.

3. That the said £—— may not be paid out without notice to the said A. B.

4. That the said A. B. may be ordered to pay to the applicant his costs of this application.

[*Add, if desired:*] 5. That in default of such payment being made by the said A. B. within the time aforesaid, the premises

(*p*) See Dan. Pr. 1156, 1165; and see *ante* No. 1107 (8). For order in like case, see Seton, ed. 3, 1190. For the method of enforcing the contract against the purchaser, see Dan. Pr. 1178—1180; and of enforcing an order for payment into Court, see *post* note (*a*) at p. 687.

whereof he has been allowed the purchaser, as aforesaid, may be resold pursuant to the conditions of sale under which he purchased the same; without prejudice to his liability to make good any deficiency in the price which may be obtained upon such re-sale, and all costs and expenses occasioned by his default (*q*).

1170. Summons to compel payment by former purchaser of deficiency on a resale, after his default (*r*).

[*Proceed as in* No. 1151 *ante, to* may be ordered; *and continue thus:*]
on or before the ——, 187—, or subsequently within seven days after service to pay into Court, to the credit of [*&c.; as in the judgment or order for sale*], the sum of £——, being the difference between the sum of £——, the price at which the said A. B. was allowed the purchaser as aforesaid, and the sum of £—— for which the said premises have been resold in pursuance of the order dated the ——, 187—, on his default; and that the said A. B. may be ordered to pay to the applicant and the defendant [*or as may be*] all costs and expenses of and occasioned by such default, and of this application: to be taxed by the Taxing Master.

1171. Summons by purchaser for an inquiry as to the title (*s*).

Formal parts: see ante No. 881.
on the part of A. B.: who [*Describe the purchaser, as in* No. 1144 *ante*]: that, the applicant objecting to the title to the said premises, an inquiry may be made whether a good title can be made thereto.

1172. Summons by purchaser to be discharged from his purchase (*t*).

Formal parts: see ante No. 881.
on the part of A. B.: who [*Describe the purchaser, as in* No. 1144 *ante*]:

1. That the applicant may be discharged from being such purchaser.

2. That his costs, charges, and expenses occasioned by his bidding for,

(*q*) See *ante* No. 1107 (10).

(*r*) See Dan. Pr. 1156, 1181; and *ante* No. 1107 (10). For the mode of enforcing the order, see *post* note (*a*) at p. 687.

(*s*) See Dan. Pr. 1165, 1180. For order in like case, see *Kemp* v. *Nunn*, M. R. at Chambers, 15 Jan. 1864, Reg. Lib. A. 25; and see Seton, ed. 3, 1190. For form of statement of points in dispute, see *ante* No. 1004; which can be readily adapted to this case.

(*t*) See Dan. Pr. 1168, 1180. For order in like case, see Seton, ed. 3, 1208. For forms of condition of sale for the discharge of a purchaser, where the vendors

Or, by his entering into the conditional contract dated the —— day of ——, 187—, in the said order of the —— day of ——, 187—, mentioned,

and being allowed the purchaser of the said premises, and of and incident to this application, may be taxed.

3. That his said costs, charges, and expenses,

[*If so:*] and also the sum of £——, paid by him as a deposit on his purchase money,

may be paid to him out of the £—— cash in Court to the credit of [*&c.; as in Paymaster-General's certificate*]:

Or, may be raised by a sale of the £—— consolidated £3 per cent. annuities in Court to the credit of [*&c.; as in Paymaster-General's certificate*], and paid to the applicant:

Or, may be paid to him by the plaintiff C. D.,

without prejudice to the question by whom, or out of what fund, the same should be ultimately borne.

1173. Summons by vendor to discharge purchaser (*u*).

[*Proceed as in* No. 1151 *ante, to end of description of the purchaser; and continue thus:*] may be discharged from being such purchaser, on the terms following: [*State them*].

1174. Summons to substitute a purchaser (*x*).

Formal parts: see ante No. 881.

on the part of A. B.: who [*Describe the original purchaser, as in* No. 1144 *ante; and continue thus:*] and of C. D., of [*residence and addition*], that the said C. D. may, on or before the ——, 187— [*Add particulars of purchase money, valuation of timber, and interest, to be paid into Court, as in* No. 1145 *ante*]; and that thereupon the said C. D. may be substituted for the said A. B. as the purchaser of the said premises; and be let into possession [*Continue as in* No. 1145 *ante, to the end*].

1175. Notice of motion or summons to open biddings, or for a resale (*a*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the plaintiff [*or as may be*], that the biddings at the sale, on the —— day of ——, 187—, of the estate directed to be sold by the judgment [*Or*, order] dated the —— day of ——, 187—, may be opened, and that A. B., the highest bidder at the said sale, may be bound by his highest bidding thereat: which amounted to the sum of £——. Or that the said A. B. may be discharged from being the purchaser of the said estate, and the said estate be directed to be resold; upon such terms as to costs or otherwise as the Judge shall think fit.

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are unable to remove valid objections by him to the title, see Dan. Pr. 1166, note (*c*); and *ante* No. 1108 (1). As to the grounds for rescinding a contract, see Dan. Pr. 1166—1168.

(*u*) See Dan. Pr. 1181.

(*x*) *Ibid.*, 1182. For order in like case, see Seton, ed. 3, 1207.

(*a*) See Dan. Pr. 1183; and see the Sale of Land by Auction Act, 1867 (30

1176. Affidavit in support of motion or summons (*b*).

Formal parts: see ante No. 693.

1. [*Show that the property in question was put up for sale by public auction, with the approbation of the Judge, pursuant to particulars and conditions of sale settled by him; or as may be; and the result of such sale.*]

2. [*Show the ground of fraud or improper conduct in the management of the sale, leading up to the application to open the biddings, or for a resale.*]

3. [*Show means of knowledge.*]

1177. Notice of motion or summons for return of deposit to a person outbid at a resale (*c*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of A. B., in the order, dated the —— day of ——, 187— [*Order directing the resale*] named, that the sum of £——, paid by him as a deposit,

[*If so:*] together with interest thereon at the rate of £5 per cent. per annum, from the —— day of ——, 187—, till payment (the amount of such interest to be verified by affidavit),

may be paid to him out of the £—— cash in the Court to the credit of [*&c.; as in the Paymaster-General's certificate*].

Or, may be raised by a sale of a competent portion of the £—— consolidated £3 per cent. annuities [*or as may be*] in Court to the credit of, *&c.*, and be paid to the said A. B.

1178. Conditional contract of sale (*d*).

Memorandum of agreement made the —— day of ——, 187—, between A. B., of [*residence and addition*], as the agent for and on behalf of the parties interested under the will of E. F., late of, *&c.*, deceased, in the hereditaments and premises hereinafter mentioned [*or as may be*], of the one part, and C. D., of [*residence and addition*], of the other part, as follows:—

1. The said A. B. agrees to sell, and by all necessary parties to convey or assure, to the said C. D., his heirs and assigns, or as he or they shall direct, and the said C. D. agrees to purchase, the hereditaments and premises comprised in (lot —— of) the within particulars, at the price or sum of £——: of which sum the said C. D. has this day paid to the said A. B. the sum of £——, as a deposit, and in part payment thereof.

2. The sale and purchase aforesaid are to be subject to the

& 31 Vict. c. 48), s. 7. For the former practice as to opening the biddings after a sale, see Dan. Pr. 1196—1202, ed. 4; Seton, ed. 3, 1202—1207.

(*b*) See *ante* No. 1175, note (*a*).

(*c*) See Dan. Pr. 1184.

(*d*) *Ibid.* For the practice on sales by private contract, under the sanction or the Court, see *Ibid.*, 1184—1186.

within particulars and conditions of sale (*e*), in all respects save the following, namely : [*State what; as thus :*]

The conditions Nod. 1, 2, *&c.*, are not to apply. The abstract to title under the condition Nod. 6, is to be delivered on or before the ——, 187— ; the balance of the purchase money is to be paid into Court on or before the ——, 187— ; and the purchaser is to be entitled to possession, or to the rents and profits, from the ——, 187—.

3. This agreement is conditional on the same being approved by his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], in the action of G. *v.* H., now attached to the said Judge.

4. The said A. B., or other proper party, is forthwith to take all necessary steps to obtain, at the expense of the vendor, the approval of the said Judge to this agreement.

5. This agreement is to be void, unless the approval of the said Judge be, within —— weeks from the date hereof, obtained to this agreement, either in its present terms, or with such variation therein as shall be approved by the said C. D. within the like time.

As witness our hands.

A. B.
C. D.

Signed by the said A. B. and C. D., in the presence of L. M., of [*residence and addition*].

1179. Petition to carry conditional contract into effect (*f*).

Formal parts : see post No. 1578.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows :

1. [*Show the object of the action ; and that the estate contracted to be sold is part of the subject-matter thereof ; and that the Court has directed, or has power to direct, a sale of the estate : see paragraphs* 1, 2, 3 of No. 1167 *ante.*]

2. By an agreement, dated the —— day of ——, 187—, made between [*&c. : recite the material parts of the agreement*].

3. It will be for the benefit of all parties interested in the said estate that the said agreement should be confirmed and carried into effect.

Your petitioner therefore humbly prays, that the said agreement dated the —— day of ——, 187—, may be confirmed and carried into effect ; and that the costs of your petitioner, and of all other

(*e*) See Dan. Pr. 1184. The form assumes that the agreement will be indorsed on a print of the particulars and conditions of sale. Where that is not to be the case, the property must of course be described, and the agreed conditions of sale set out, either in the agreement, or in a schedule or exhibit thereto.

(*f*) See Dan. Pr. 1185.

parties properly appearing, may be costs in this action. Or that [*Conclude as in* No. 1578 *post; and add foot note,* No. 1579 *post*].

1180. Summons to carry conditional contract into effect (*g*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that the conditional contract, dated the —— day of ——, 187—, made between the applicant [*or as may be*] of the one part, and C. D., of [*residence and addition*], of the other part, for the sale to the said C. D., at the sum of £——, of the hereditaments and premises therein described or referred to, part of the estates directed to be sold by the judgment [*Or*, order], dated the —— day of ——, 187—, may be carried into effect.

1181. The like, subject to a variation (*h*).

[*The same as in* No. 1180 *ante; but conclude thus:*]

may, by consent of the said C. D., be varied by [*Describe the proposed variation; as thus:*]

substituting £8,000, for £7,600, as the purchase money for the said premises,

and, as so varied, may be carried into effect.

1182. Affidavit in support (*i*).

[*Proceed as in* No. 1012 *ante, to the end of paragraph* 1.]

2. I have examined and surveyed the hereditaments and premises described or referred to in the conditional contract for the sale thereof, dated the —— day of ——, 187—, made between A. B. of the one part, and C. D. of the other part, now produced and shown to me, and marked A. (*j*); and which said sale was negotiated by me on behalf of the said A. B. [*or as may be*].

3. The sum of £—— in the said contract mentioned is, in my judgment and opinion, the full and fair value of the said hereditaments and premises, and fully as much as would probably be obtained for the same at a sale thereof by public auction.

4. It will be advantageous to all parties interested in the said premises that the said contract should be confirmed and carried into effect.

Sworn [*&c., see ante* No. 696].

(*g*) See Dan. Pr. 1185. For orders in like case, see *Re Barlow*, V.-C. S. at Chambers, 14 Jan. 1864, Reg. Lib. A. 40; and Seton, ed. 3, 1189, No. 1; and for an order to carry into effect several contracts specified in a schedule, with directions to pay in, by reference to the schedule, see *Smith* v. *Smith*, cited Seton, ed. 3, 1189.

(*h*) See Dan. Pr. 1185. For order in like case, see *Woolmer* v. *Hirtzel*, M. R. at Chambers, 20 July, 1866, Reg. Lib. B. 1739; and see Seton, ed. 3, 1189, No. 2.

(*i*) See Dan. Pr. 1185.

(*j*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

1183.

Affidavit verifying purchaser's signature to the contract (*i*).

Formal parts: see ante No. 693.

1. The signature "——," set and subscribed to the paper writing, marked A., now produced and shown to me (*j*), and purporting to be an agreement, dated the —— day of ——, 187--, between A. B. of the one part, and C. D. of the other part, is of the proper handwriting of C. D., one of the parties to the said agreement: as I know from having seen the said C. D. sign the said paper writing.

1184.

Summons to confirm conditional contract, and to pay in purchase money (*k*).

[*Proceed as in* No. 1180 *or* 1181 *ante, to the end; and continue thus:*]

and that the said C. D., he being content with the title to the said premises may, on or before [*Continue as in* No. 1145 *ante, to the end.*]

1185.

Particulars and conditions of sale of timber (*l*).

In the High Court of Justice,

Chancery Division.

[*Short title of action and reference to the record.*]

Hinton St. George [*and other parishes*], Somersetshire,

About six miles from C., ten miles from Y., and three miles from D.

To government contractors, ship builders, timber merchants and others.

Particulars and conditions of sale of prime navy oak timber, flitterns, fine ash, elm, and beech timber, comprising 969 oak trees [*and other particulars*]:

which will be sold by auction, pursuant to an order of the High Court of Justice, made in the above action, by Mr. C. B. S. (the person approved of by the Judge, to whom the said action is attached), at the "Poulett Arms," Hinton St. George, in the county of Somerset, on Tuesday, the —— day of ——, 18—, at two o'clock, punctually.

The attention of government contractors, ship builders, timber merchants, and others, is particularly directed to this extensive fall of fine timber: the trees being principally of clean growth, very large dimensions, of a most superior quality, and adapted for

(*i*) See Dan. Pr. 1185.

(*j*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*k*) See Dan. Pr. 1184. For order in like case, see *Renwick* v. *Hackworth*, M. R. at Chambers, 19 July, 1866, Reg. Lib. B. 1604. As to paying in a deposit, see Dan. Pr. 1184.

(*l*) *Earl Poulett* v. *Somerset*, M. R. in Chambers, April, 1865; Dan. Pr. 1207. For forms of orders for the sale of timber, see Seton, ed. 3, 511, 1015. For the practice as to the sale of timber by auction, see Dan. Pr. 1186—1187; and by valuation, see *ante* No. 1107 (7).

shipping and other purposes. The timber stands adjacent to good roads, and within an easy distance of railway and water carriage.

Catalogues, with particulars and conditions of sale, may be had at the following hotels [*Naming them*] : of Messrs. P. and A., at *&c.* ; of Mr. G. A., at, *&c.*, solicitor ; of Messrs. W. and J., at, *&c.*, solicitors ; of Mr. R. M., at, *&c.* ; and of the auctioneer, at P. and W.

The several lots will be shown by Mr. R. M., of Hinton St. George : on application being made to him.

PARTICULARS.

Timber in the Parish of Hinton St. George.
Lyddon Hill Plantation.

Lot 1.—86 oak trees numbered ——.
[*and so on as to the other places and lots.*]

CONDITIONS OF SALE.

1. No person shall advance less than 20*s.* at each bidding for lots under £20 in value ; nor less than £5 for all lots above that sum in value ; nor retract his bidding. (1). Advance at each bidding.

2. The highest bidder shall be the purchaser, on being declared as such by the auctioneer : whose decision in this respect shall be final. (2). Highest bidder.

3. The sale is subject to a reserved bidding for each lot : which has been fixed by the Master of the Rolls, the Judge to whom this action is attached. (3). Reserved bidding.

4. The Chief Clerk of the said Judge will, on ——, the —— day of ——, 18—, at twelve of the clock at noon, certify the result of the sale, at the Chambers of the said Judge, in the Rolls' Yard, Chancery Lane, Middlesex : at which time and place respective purchasers may, if they think fit, attend in person, or by their solicitors. (4). Certifying result of sale.

5. Each purchaser is at the time of sale to subscribe his name and address to his bidding, and sign an agreement for the performance of these conditions. As to all lots, the purchase money for which shall not exceed £25, each purchaser thereof shall immediately after the sale, or on the fall of the hammer, if required, pay into the hands of C. B. S., the auctioneer and person appointed by the said Judge to receive the same, the full amount of the purchase money for such lot. And as to all lots the purchase money for which shall exceed the sum of £25, each purchaser thereof shall immediately after the sale, or on the fall of the hammer, if required, pay into the hands of the auctioneer a deposit of £20 per cent. on the amount of his purchase money ; and shall, within twenty days from the day of sale, make and deliver at the expense of such purchaser, his bill or bills, note or notes, with a sufficient surety or sureties, for the remainder of his purchase money, pay- (5). Mode of payment of purchase money.

able to C. B. S., or order, six months after the day of sale, at a banker's in London. Until such bills or notes respectively be given, the purchaser required under this condition to give the same shall not enter upon the premises, or fell or remove away any part of the said timber or trees, but such timber or trees shall, until such bills or notes be so given, be and remain the property of the vendors; and in case default shall be made in procuring such surety or sureties, or in giving such bills or notes as aforesaid, the deposit money shall be forfeited, and the vendors shall have and take to the timber and trees purchased by the person or persons making default, for the use and benefit of the person or persons interested in the estates on which the same shall be standing or growing. If any purchaser, whose purchase money shall exceed £25, shall prefer to pay cash in lieu of giving bills or notes, discount at the rate of 2½ per cent. will be allowed on the amount which he prefers so to pay, on payment thereof.

(6). By purchaser of several lots.

6. If any person shall purchase more than one lot, the lots so purchased by him shall be considered, for the purpose of the 5th condition, as one lot; and the total amount of the purchase money for such lots shall be paid, or the deposit be paid in respect thereof, and security for the remainder be given, as the case may be accordingly.

(7). Resale on default.

7. If any purchaser shall neglect or fail to pay the purchase money in manner aforesaid, or, before such payment shall have been made, shall become bankrupt, or unable to pay 20*s.* in the pound to his or their creditors, the vendors, or their agents or servants, shall be at liberty to secure and take all the timber and trees, and other produce arising therefrom, purchased by such purchaser, that shall be remaining on the said lands; and the vendors shall be at liberty to sell and dispose of the same, and to apply the money arising by such sale towards paying the purchase money of such purchaser, or such part thereof as shall be unpaid, and all charges attending the converting and selling the said timber and trees and produce thereof: rendering the overplus (if any) to such purchaser, or to any person or persons claiming under him; but such taking possession and sale shall not discharge such purchaser, or his surety or sureties, from their respective liability upon any bill or note then unpaid, any further or otherwise than to the extent of the net proceeds to arise from such sale.

(8). Time for removal.

8. The trees shall be felled in a proper and workmanlike manner, and together with the top, lop, and bark thereof, shall be removed and taken away from the lands at the purchaser's expense, by the —— day of ——, 18—; and if any part of the trees, or top, lop, or bark thereof, shall be, or remain on any part of the said lands after the said time for removing the same as aforesaid, the vendors shall have and take the same to their own use: without making any compensation or satisfaction to the purchaser or purchasers thereof.

9. The timber, bark, tops, and lops, shall not in any way be unnecessarily or improperly dispersed over the woods or fields; and the respective purchasers shall use all possible caution to prevent damage to the lands, growing crops, hedges, and gates, and to the adjacent standing timber, in the felling or removing of the timber, and the top, lop, and bark thereof, purchased by them; and with their servants, carriages, teams, and horses, shall keep the accustomed roads to and from the woods, plantations, or other parts of the lands where such timber shall be felled, or such other tracts and ways as shall be pointed out by the vendors, or their agents or servants; and the purchasers or their servants, or workmen, shall not take any dogs into the woods or plantations, or upon the said lands. All injury or damage arising from any breach or disregard of this or any other of these conditions, or any other wilful, unnecessary, or negligent damage, by any of the purchasers or their respective agents, workmen or labourers, horses, and other cattle, to the lands, or other standing timber and trees on the estates, or to the tenants, their stock, or crops, by the fall or removal of the timber and trees hereby proposed to be sold, shall be forthwith made good and paid by the purchaser thereof; and the amount of such injury or damage shall be settled by the said Judge in case the parties differ about the same; and be thereupon recovered by the vendors as liquidated damages, by such proceedings as may be thought proper; and in such proceedings the certificate of the Chief Clerk of the said Judge shall be conclusive evidence of the amount of such damage; and all questions of compensation to be paid by, or received by, the purchasers shall, in case the parties differ about the same, be settled by the Judge.

(9). Mode of removal.

Compensation for damage by purchasers.

10. No tree, pole, or teller, not included in the present sale, shall be cut: under the penalty of £10 for each tree, poll, or teller so cut, over and above the value thereof; and such penalty and value shall be recoverable as liquidated damages.

(10). Penalty for cutting unsold trees.

11. A reasonable number of sawpits may be made in the woods or plantations, at the expense of the purchaser requiring the same; but in such places only as the vendors or their agents shall direct; and the sawpits to be so made shall be filled up and levelled by and at the expense of the purchaser or purchasers making the same, on or before the —— day of ——, 18—.

(11). Sawpits.

12. The purchasers may, with the consent of the agent for the time being of the vendors, erect and use a steam sawing engine or steam sawing engines, not exceeding in the whole two in number, in such place or places as the said agent shall approve in writing, for the purpose of sawing the trees purchased by them into timber; but no such consent will be given unless due provision shall be made as to the procuring of the water required for working such engine or engines, without causing any impediment or inconvenience to the owner or occupier of the lands on which such engine or engines shall be erected, or from which such water shall be obtained.

(12). Steam sawing engines.

(13). Decision of disputes, &c.

13. If any dispute shall arise as to the identity or number of trees comprised in any lot, such dispute shall be decided by Mr. R. P., of H., timber valuer; and no mistake, error, or mis-statement whatsoever in the particulars of sale, or any part thereof, shall vacate or vitiate the sale of the several lots, or any of them; and no compensation or allowance shall be made, paid, or allowed by the vendors or purchasers in respect of any such mistake, error, or mis-statement.

(21.) *Settlement of Bills for Acts of Parliament* (*m*).

1186.

Chief Clerk's certificate of approval of draft bill (*n*).

Formal parts: see post No. 1238.

The draft of a bill to be submitted to Parliament for an Act to [*Set out the title, as in the bill*], has been settled and approved by the Judge; and is identified by my signature at the foot [*Or*, in the margin of the first page] thereof.

[*If the recitals in the bill have been proved, add:*] The several instruments, facts, and events recited in the preamble of the said draft bill, immediately before the recital therein of this certificate, have been proved in this action [*or as may be; or if some have not been proved, specify them*].

The evidence produced, *&c.*

1187.

Memorandum of identity of the draft bill (*o*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

This is the draft of the bill to Parliament referred to in my certificate in this action [*Or*, matter], dated the —— day of ——, 187—.

R. M., Chief Clerk.

1188.

Recital of the Chief Clerk's certificate in the preamble of the bill (*o*).

And whereas in pursuance of the said recited order of the High Court of Justice, dated the —— day of ——, 187—, the Chief Clerk of the said Master of the Rolls [*Or*, Vice-Chancellor ——] made his certificate, dated the —— day of ——, 187—, in the said action [*Or*, matter], and thereby certified as follows:—In pursuance of the directions given to me by [*Recite the certificate: omitting the statement of the evidence*]: And whereas the said Chief Clerk's certificate was duly approved by the said Master of the Rolls [*Or*, Vice-Chancellor ——], and was on the —— day of ——, 187—, duly filed in the Report Office of the Chancery Division of the said High Court of Justice.

(*m*) For the practice on this subject, see Dan. Pr. 1187, 1188; and for forms of orders, see Seton, ed. 3, 693, No. 6; 694, No. 7.

(*n*) See Dan. Pr. 1187. The certificate is written either in the margin or at the foot of the draft bill.

(*o*) See Dan. Pr. 1187.

1189. Affidavit verifying a print of the draft bill (*o*).

Formal parts: see ante No. 693.

1. I have carefully examined and compared the printed bill now produced and shown to me, and marked A. (*oo*), with the draft of a bill also now produced and shown to me, and marked B. (*oo*): being the draft of the bill to Parliament which has been settled at the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], in pursuance of the order in this action [*Or*, matter], dated the —— day of ——, 187—.

The said printed bill, marked A., is a true and correct copy in print of the said draft bill, marked B.

1190. Memorandum of approval of draft bill by the Judge (*p*).

I have settled and do approve of this bill: which is a printed copy of the draft bill referred to in my Chief Clerk's certificate, dated the —— day of ——, 187—, in this action [*Or*, matter].

Dated this —— day of ——, 187—.

[*Judge's signature.*]

Section IV.—Proceedings on adjournments to Chambers (*q*).

1191. Summons to proceed on matter adjourned to chambers (*r*).

Formal parts: see ante No. 881.

on the part of the petitioner A. B., to proceed on the petition preferred by him on the —— day of ——, 187—, in this cause [*Or*, matter]: and which, on the —— day of ——, 187—, was adjourned for consideration in Chambers [*or as may be*].

(*o*) See Dan. Pr. 1187.

(*oo*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*p*) See Dan. Pr. 1188.

(*q*) As to the power of the Court or Judge to adjourn a matter from or to Chambers, see Dan. Pr. 1040, 1056, 1057; 15 & 16 Vict. c. 80, s. 27; Seton, ed. 4, 62, 63. For the practice on adjournments to Chambers, and as to the Registrar's note of the matter adjourned to Chambers, or the directions given to be acted upon at Chambers, see Regul. 8 Aug. 1857, rule 3; Dan. Pr. 1188. The note should be written on a separate sheet, or half sheet, of foolscap paper; Dan. Pr. 1188, note (*l*).

(*r*) See Dan. Pr. 1188. A summons is sometimes dispensed with; *Ibid.*, note (*n*).

Section V.—Infants (*s*).

(1.) *Appointment and removal of Guardians* (*t*).

1192. Summons for the appointment of a guardian of the person, where an action is pending (*u*).

In the High Court of Justice,
Chancery Division.

[*Title of the action or matter* (*x*), *and reference to the record.*]

Let [*&c.: Proceed as in* No. 865 or 881 *ante, to* application ; *and continue thus:*] on the part of the plaintiff [*Or,* defendant ; *Or,* above-named] A. B., an infant, by C. D., of [*residence and addition*], his next friend (*y*), that the said C. D. [*State degree of relationship, if any, to the infant; as thus:*] the maternal uncle of the said infant, or some other proper person, may be appointed the guardian of the person of the said A. B. during his minority, or until further order [*Add, if desired, a direction for payment of the costs of the application: see post, paragraph* 3 *of* No. 1194].

Dated [*&c. ; Conclude as in* No. 865 *or* 881 *ante.*]

1193. Summons for the appointment of a guardian of the person, where no action is pending (*z*).

In the High Court of Justice,
Chancery Division.
In the matter of A. B., an infant, by C. D., his next friend.

Let [*&c.: Proceed as in* No. 865 *ante, to* application ; *and continue thus:*] on the part of the above-named infant A. B., by the above-named C. D., of [*Continue as in* No. 1192 *ante, to the end*].

Dated [*&c. ; Conclude as in* No. 865 *ante*].

(*s*) See Dan. Pr. 1189—1214.

(*t*) See Dan. Pr. 1189—1198 ; 15 & 16 Vict. c. 80, s. 26. As to what constitutes a ward of Court, see Dan. Pr. 1190. As to the custody of infants, see 36 & 37 Vict. c. 12 ; Morgan, 308—310 ; and *post* No. 2312. For the origin and history of the general jurisdiction of the Court in respect of infants, see Dan. Pr. 1189, note (*x*). For order directing an infant to return to the custody of, and reside with her guardian, see *Toone* v. *Baker*, M. R. at Chambers, 9 May, 1870, Reg. Lib. B. 1108.

(*u*) See Dan. Pr. 1192.

(*x*) Where the infant is not a party to the suit, the application should be intituled in the matter of the infant, and in the suit, and be made by an originating summons ; Dan. Pr. 1192. As to originating summonses, see *ante* No. 865, and note thereto.

(*y*) For form of authority by the next friend to use his name, see *ante* Nos. 46, 47. Where the infant is a party to the suit, and the application is made by him by his next friend, or guardian *ad litem*, therein, the residence of such next friend, &c., need not be stated, and no written authority by him need be filed.

(*z*) See Dan. Pr. 1192, and notes to No. 1192 *ante*. For order in like case, see *Re Boyle*, V.-C. S., at Chambers, 9 Feb. 1864, Reg. Lib. A. 330. The application is made by an originating summons. For form of authority by the next friend to use his name, see *ante* Nos. 46, 47.

1194.
Summons for the appointment of a guardian of the person and estate—or estate only—where no action is pending (*a*).

In the High Court of Justice,
Chancery Division.
In the matter of A. B., an infant, by C. D., his next friend.

Let [*&c.: Proceed as in* No. 865 *ante, to* application; *and continue thus:*] on the part of the above-named infant A. B., by the above-named C. D., of [*residence and addition*], his next friend:

1. That the said C. D. [*State degree of relationship, if any, to the infant; as thus:*] the brother of the said infant, or some other proper person, may [*If so:* upon giving security] be appointed the guardian of the person and estate

Or, the guardian of the estate

of the said A. B., during his minority, or until further order.

[*If the guardian is to pass accounts, add:*] 2. And that the said C. D., or other such guardian, may from time to time pass his accounts, and pay the balances which shall be certified to be due from him into Court, to the credit of "In the matter of A. B. an infant;" and that such balances may be invested in consolidated £3 per cent. annuities and that the dividends to accrue on such annuities may be from time to time invested in like annuities.

[*If any provision as to costs is necessary, add:*] 3. And that the costs of this application may be taxed as between solicitor and client; and that the said C. D., or other such guardian, may retain and pay the same out of any moneys of the said infant which may come to his hands, and be allowed the same on passing his said accounts [*or as may be*].

Dated [*&c.; Conclude as in* No. 865 *ante*].

1195.
Affidavit in support of application to appoint a guardian (*b*).

In the High Court of Justice,
Chancery Division.
[*Title of the action or matter, and reference to the record.*]

We, C. D., of [*residence and addition*], and W. R., of, *&c.*, severally make oath and say, as follows:—

And first I, the said C. D., for myself say, as follows:

(*a*) See Dan. Pr. 1196, and notes to No. 1192 *ante*.

(*b*) See Dan. Pr. 1195. Upon an application for the appointment of a guardian, evidence must be produced to show: (1) the age of the infant; (2) the nature and amount of his fortune; and (3) what relations he has; *Ibid.*; Regul. 8 Aug. 1857, rule 19; Bloxam, 43. The fitness of the proposed guardian to be appointed must also be proved by affidavit; and his willingness to act should be shown by production of his written consent; Dan. Pr. 1195. The nature of the other evidence to be adduced in support of the application will depend on the circumstances of the particular case. Thus, it may be necessary to show the marriage of the infant's parents; or the happening of events which have led to the infant becoming entitled to the property sought to be affected by the order, or to the interposition of the Court being required.

1. I am the person proposed to be appointed the guardian of the above-named infant A. B.

Or, A. B., the infant named in the summons issued from the Chambers of the Master of the Rolls [*Or*, Vice-Chancellor ——], in this matter on the —— day of ——, 187— [*or as may be*].

2. [*Show infant's age; as thus:*] The said A. B. is now of the age of —— years and upwards. He is the same person as "A., son of C. and L. B." named in the paper writing now produced and shown to me, and marked A. (*b*), and purporting to be a copy, under the seal of the General Register office, of the entry No. ——, in the certified copy of entries of births in the district of D., in the county of L., for the year 18—.

3. [*Show nature and amount of infant's fortune; as thus:*] The said A. B. is absolutely entitled, under the will of his maternal uncle E. F., late of [*residence and addition*], deceased, to the following properties; namely:—

(1) A freehold estate situate at G., in the county of H., containing about 80 acres, and held by L. M. on lease at £120 a year.

(2) A copyhold house at G., aforesaid, let to N. O. as yearly tenant, at £50 a year.

(3) £2,000 consolidated £3 per cent. annuities, standing in the names of R. S. and T. W., the trustees of the will of the said E. F.

(4) £60 cash in the hands of the said R. S. and T. W., arisen from dividends on the said bank annuities.

The said A. B. is also entitled, under the said will, in remainder expectant on the death of N. F., the widow of the said E. F., to a life interest in £7,000 New £3 per cent. annuities, also standing in the names of the said R. S. and T. W., the trustees thereof.

4. [*Show what relations the infant has* (*c*)*; as thus:*] The only relations of the said A. B. now living are:—(1) This deponent, his maternal uncle; (2) S. H., wife of T. H., of [*residence and addition*], the half-sister of the said A. B.; and (3) R. D. V., the half-brother of the said A. B.: who is a captain in Her Majesty's army, and is now stationed with his regiment at Bombay, in the East Indies.

5. [*Show where the infant is now residing, and under whose care; as thus:*] The said A. B. was, at the time of the death of his father

(*b*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*c*) What "relations" are to be included in the statement is a matter of discretion in each case. As a general rule, it should at least be shown what persons there are of or within the same degree of relationship as the proposed guardian; and if the mother is proposed as a guardian, the evidence should extend to uncles and aunts on the father's and mother's sides. The summons should be served upon such relations, unless their acquiescence in the appointment of the proposed guardian is otherwise proved, or service on them is dispensed with; Bloxam, 43; Dan. Pr. 1195.

C. D., which happened on the ——, 187—, and is now residing as a scholar, at Marlborough College, Wiltshire.

6. [*Show means of knowledge.*]

7. [*State willingness to act as guardian; as thus:*] I am willing to act as the guardian of the person and estate [*or as may be*] of the said A. B., during his minority, in case this honourable Court shall think fit to appoint me to that office.

And I the said W. R. for myself say, as follows:

8. [*Show fitness of proposed guardian; as thus:*] I know, and have for —— years last past been well acquainted with, the deponent C. D. The said C. D. is married, and has three children; namely: a son of the age of —— years; and two daughters of the respective ages of —— and —— years. The said C. D. resides with his wife and children at [*State where*]. In my judgment and belief the said C. D. is a fit and proper person to be appointed the guardian of the person and estate [*or as may be*] of his nephew the said infant A. B., for the following reasons: [*State them*].

Sworn [*&c.: see ante* No. 696 *or* 698.]

1196. Consent of guardian to act (*d*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

I, the undersigned C. D., of [*residence and addition*], do hereby testify my consent to accept the office of guardian of the person and estate [*or as may be*] of the above-named infant A. B. [*or as may be*], in case this Court shall think fit to appoint me to that office. Dated this —— day of ——, 187—.

C. D.

Signed by the said C. D., in the presence of J. K., of [*residence and addition*].

1197. Recognizance by a guardian of the estate and his sureties, after an order appointing him subject to his giving security (*e*).

[*Proceed as in* No. 1117 *ante, to the first* whereas; *then recite the order appointing the guardian, subject to his giving security; and continue thus:*]

And whereas the Master of the Rolls [*Or*, the Vice-Chancellor ——], the Judge to whom the said matter is attached, hath approved of the above bounden C. D. and E. F. as sureties for the said L. M.; and hath also approved of the above-written

(*d*) See Dan. Pr. 1195. For form of affidavit verifying the signature, see *ante* No. 1090, which can readily be adapted. Where, as in No. 1195, the willingness to act of the proposed guardian is shown by his affidavit, his separate written consent to act is not required.

(*e*) See Dan. Pr. 1196. For form of memorandum of approval, see *ante* No. 1117, margin. The amount of the security is regulated by the sum which the guardian is likely to receive during the currency of his periodical account; Dan. Pr. 1196. As to when security will be dispensed with, see *Ibid.*

recognizance, with the under-written condition, as a proper security to be entered into by the said L. M., C. D., and E. F., pursuant to the said order, and the Consolidated General Orders of the Court in that behalf; and in testimony of such approbation the Chief Clerk of the said Judge hath signed an allowance in the margin hereof:

Now the condition of the above-written recognizance is such, that if the said L. M. do and shall duly account for all and every the sum and sums of money which he shall receive on account of the estate of the said infant A. B., and the rents and profits and other income thereof, at such periods as the said Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed, or shall hereafter direct: then the above recognizance shall be void and of none effect: otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged [*&c.: see ante* No. 1117].

1198.

The like recognizance, after approval of the guardian, but before an order appointing him is made (*f*).

[*Proceed as in* No. 1117, *to the first* whereas; *and continue thus:*] Whereas an application was lately made to the High Court of Justice by a summons taken out at the Chambers of the Right Honourable the Master of the Rolls [*Or*, his Honour the Vice-Chancellor ——], on behalf of A. B., an infant, by the above bounden L. M. as his next friend, and intituled "In the matter of A. B., an infant, by L. M. his next friend" [*or as may be*], that the said L. M., or some other proper person, might be appointed the guardian of the estate of the said infant during his minority, or until further order [*or as may be*].

And whereas the Master of the Rolls [*Or*, the said Vice-Chancellor], upon the hearing of the said application, has approved of the said L. M. as a proper person to be appointed such guardian, subject to his first giving security; and has also approved of the above bounden C. D. and E. F. [*Continue as in* No. 1197 *ante, to the end: omitting the words* "the said order and"].

1199.

Affidavit of the sureties, as to their solvency (*f*).

[*The same as* No. 1118: *substituting the words:* "for all moneys which he shall receive on account of the estate of the said infant A. B., and the rents, profits, and other income thereof" [*or as may be, according to the condition of the recognizance*] *for the words:* "for the deposits to be received by him on the sale in this action [*Or*, matter]"].

(*f*) See Dan. Pr. 1196.

1200. Summons to appoint guardians of the person and estate, on deposit of a security fund in Court, in lieu of a recognizance (*g*).

Formal parts: see ante No. 881.

on the part of the infant plaintiffs, by G. A. S. their next friend, that upon the said G. A. S. transferring into Court, to the credit of Sartoris *v.* Sartoris (1864, S. 80), "The Guardians' Security Account," £——, consolidated £3 per cent. annuities, the said G. A. S., and the said A. S., may be appointed guardians of the persons and estates of the infant applicants during their respective minorities: the said annuities to stand as security that the said guardians will duly account for all moneys which they may receive in respect of the infants' estate: and that, in the mean time, the dividends as they accrue due on the said annuities may be paid to the said G. A. S., until further order [*Direction to pass accounts and pay in balances: see ante* No. 1194].

1201. Account of the guardian of an estate, and affidavit verifying same (*h*).

[*These forms can be readily adapted from the like forms in use in the case of a receiver: for which, see post* Nos. 1686, 1687.]

1202. Summons to remove a guardian, or supply a vacancy (*i*).

[*Proceed as in* No. 1192 *or* 1194 *ante, to* further order; *and add:*] in the place of X. Y., his present guardian [*Or*, now deceased; *Or*, who has intermarried with W. U.; *or as may be; and add, if desired, a direction for payment of the costs of the application*].

1203. Affidavit in support (*i*).

Formal parts: see ante No. 693.

1. [*Show how the guardian sought to be removed, or deceased, or married, was appointed.*]

2. [*Show the grounds for such removal—or prove such death, or marriage.*]

3. [*Show the fitness to be appointed of the proposed guardian, and his consent to act* (*k*).]

4. [*Show with whom, or under whose care, the infant is living.*]

(*g*) *Sartoris* v. *Sartoris*, M. R. at Chambers, 18 April, 1864, Reg. Lib. B. 804.

(*h*) See Dan. Pr. 1197. The guardian's accounts are passed in the same manner as a receiver's; *Ibid.* For order for guardian to leave his account within a limited time, see *Cox* v. *Wright*, V.-C. K. at Chambers, 15 Jan. 1866, Reg. Lib. A. 105. As to the fees on passing an account, see note (*z*) at p. 551 *ante*.

(*i*) See Dan. Pr. 1197.

(*k*) For form of consent to act, see *ante* No. 1196.

1204.
Summons for the appointment of a guardian for a special purpose (*l*).

[*Proceed as in* No. 1192 *or* 1194 *ante, to* proper person ; *and add :*] may be appointed the guardian of the said infant, for the purpose of [*State what ; as thus :*] presenting the Rev. E. F., of [*residence*], Clerk in Holy Orders, to the Lord Bishop of London, for institution to the rectory and parish church of A., now vacant by the death of the Rev. G. H. : of the advowson whereof the said infant is patron or proprietor.

1205.
Summons for leave to take infant out of the jurisdiction (*m*).

Formal parts : see ante No. 881.
on the part of the infant plaintiff [*or as may be*], that the said infant may be at liberty to accompany J. R. P. [*guardian*], on an intended visit to the L. C. R., in the K. of S. : on the undertaking of the said J. R. P. that the said infant shall return within the jurisdiction of this Court within (two months) from this time ; or immediately, if so ordered by this Court.

1206.
Undertaking to bring infant back (*n*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

I, A. B., the guardian of the person of the infant C. D., do hereby undertake that the said infant shall return within the jurisdiction of this Court within —— months from this time. Or immediately, if so ordered by this Court, or any Judge thereof. Dated this —— day of ——, 187—.

A. B.

1207.
Summons to extend time for return of the infant (*o*).

Formal parts : see ante No. 881.
on the part of the infant plaintiff [*or as may be*], that the time

(*l*) As to the appointment of special guardians in general, see Dan. Pr. 1192, note (*w*).

(*m*) For orders in like case, see *Lord Herbert* v. *Lady Herbert*, M. R. at Chambers, 25 Jan. 1866, Reg. Lib. A. 67 ; *Re Dawson, Dawson* v. *Stansfeld*, V.-C. B. at Chambers, 8 July, 1870, Reg. Lib. A. 2074 ; and see Seton, ed. 3, 719—720 ; 4 M. & C. 677 ; Macpherson, App. 18. As to taking infants out of the jurisdiction, see Dan. Pr. 1197, 1198.

(*n*) See Dan. Pr. 1198. The undertaking is usually indorsed on the summons.

(*o*) For order in like case, see *Harris* v. *Harris*, V.-C. K. at Chambers, 29 May, 1866, Reg. Lib. A. 1122.

limited by the order dated ——, 187—, for the return of the said infant within the jurisdiction of this Court, may be extended until the —— day of ——, 187—: on the undertaking of W. H. H., one of his guardians, that he shall return within the jurisdiction within the last-mentioned time; or immediately, if so ordered by this honourable Court, or any Judge thereof.

(2. 3.) *Maintenance and advancement.—Management of property* (*p*).

1208. Summons for an allowance for maintenance (*q*).

Formal parts: see ante No. 881.

on the part of the infant plaintiff [*or as may be: see ante*, No. 1192]:

That the sum of £—— per annum (free of income-tax (*r*)) may be allowed for the maintenance and education of the said infant, as from the —— day of ——, 187— (*s*), and for the time to come, during his minority, or until further order.

[*If guardian of the person be also guardian of the estate, add:*] And that such allowance may be retained and applied by W. F., the guardian of the person and estate of the said infant, by equal half-yearly payments, on the —— day of ——, and —— day of ——, out of the income of the said infant's estate: the first of such payments to be retained on the —— day of ——, 187—.

[*Or if a receiver has been appointed, or another person is guardian of the estate, add:*] And that such allowance may be paid by W. F., the guardian of the estate of the said infant [*Or*, the receiver appointed in this action [*Or*, matter]], by equal half-yearly payments [*as above*]; and that he may be allowed the same on passing his accounts.

[*Or if to be paid out of a fund in Court, add:*] And that such allowance may be paid to W. F., the guardian of the said infant, by equal half-yearly payments [*&c., as above*] out of the dividends as they accrue on the £——, consolidated £3

(*p*) See Dan. Pr. 1198—1206; 15 & 16 Vict. c. 80, s. 26. As to maintenance of infants, see also 11 Geo. IV. & 1 Will. IV. c. 65, s. 32; 23 & 24 Vict. c. 145, ss. 26, 32—34. As to the management of an infant's property by the Court, see Dan. Pr. 1204—1206. As to granting leases on behalf of infants, see *post* Nos. 2257 to 2263; and as to the conversion of an infant's property, see Dan. Pr. 1206.

(*q*) See Dan. Pr. 1201.

(*r*) *Ibid.*, 1202; Ord. 8 July, 1842, Cons. Ord. App.; Seton, ed. 3, 702.

(*s*) As to an allowance for past maintenance, see Dan. Pr. 1202, note (*a*); and see *Re Howarth*, L. R. 8 Ch. 415; *Re Hodges, Davey* v. *Ward*, 7 Ch. D. 754.

per cent. annuities in Court, to the credit of [*&c., as in Paymaster-General's certificate*].
[*Add, if desired, a direction as to the taxation and payment of the costs of the application: see ante* No. 1194].

1209.
Affidavit in support of summons for allowance for maintenance (*t*).

Formal parts: see ante No. 693.

1. [*Show the age of the infant, the nature and amount of his fortune, what relations he has, where he is residing, and under whose care: see ante* No. 1195.]

2. [*Show that the fund proposed to be operated upon for maintenance is available for that purpose.*]

3. [*Show that the sum sought to be allowed for maintenance is a proper amount; and set forth, in a schedule, a scheme for the application thereof, under the following or similar heads:*]

School bills	
Clothing	
Pocket money	
Medical attendance	
Maintenance, travelling, and incidental expenses in vacations .	
Total . .	£

1210.
Summons for an increase of maintenance (*u*).

Formal parts: see ante No. 881.

on the part of the infant plaintiff A. B. [*or as may be*], that the sum of £—— per annum may be allowed, in addition to the sum of £—— per annum, allowed by the order dated the —— day of ——, 187—, making together £—— per annum, for the maintenance and education of the said infant A. B., as from the —— day of ——, 187—, and for the time to come during his minority; and that such increased allowance of £—— a year may be raised and paid in the same manner as the said allowance of £—— is directed to be raised and paid by the said order of the —— day of ——, 187— [*or as may be*]. [*Add, if desired, a direction for payment of the costs: see ante* No. 1194.]

(*t*) See Dan. Pr. 1202.
(*u*) *Ibid.* For order in like case, see Seton, ed. 3, 701.

1211.
Summons for leave to article or apprentice an infant (*y*).

Formal parts: see ante No. 881.
on the part of the infant plaintiff [*or as may be: see ante* No. 1192].

1. That the said infant may be placed out as an articled clerk [*Or*, apprentice] with A. B., of [*residence and addition*], for the purpose of being instructed in the profession [*Or*, trade] of a ——.

2. That £—— may be allowed as a proper premium to be paid to the said A. B., and the further sum of £—— for the outfit of the said infant.

3. That proper articles of clerkship [*Or*, a proper indenture of apprenticeship] may be approved by the Judge (*z*).

4. That upon the execution of such articles [*Or*, indenture] by the parties thereto [*State how the premium, and outfit, are to be raised: as thus:*]

E. F., the guardian of the said infant, may, out of the rents and profits of his estate, pay to the said A. B. the said premium of £——; and apply the said £—— for such outfit.

Or, C. D., the trustee of the will of E. W., deceased, [*Or*, B. C., the receiver appointed in this action] may, out of the rents and profits of the said infant's estate, pay the said premium of £—— to the said A. B., and pay the said outfit of £—— to the said E. F.: on the undertaking of the said E. F. to apply the same for that purpose.

Or, the said sums of £—— and £—— may be raised by the sale of a competent portion of the £—— consolidated £3 per cent. annuities in Court, to the credit of [*&c., as in the Paymaster-General's certificate*]; and that out of the money thereby arising the said £—— may be paid to the said A. B., and the said £—— to the said E. F. [*&c.: as last above*].

5. [*Add, if desired, a direction as to the costs: see ante* No. 1194.]

1212.
Affidavit in support (*y*).

Formal parts: see ante No. 693.

1. The (above-named) infant G. H. is now of the age of —— years. He has, of his own free will, chosen to be brought up to the profession [*Or*, trade] of a ——; and wishes to be articled [*Or*, apprenticed] to learn such profession [*Or*, trade]. In my opinion he is physically adapted for such profession [*Or*, trade].

2. I have for —— years last past known and been well acquainted with A. B. of [*residence and addition of master*]; and during —— years last past he has been continuously and extensively engaged in his profession [*Or*, trade] of a ——.

(*y*) See Dan. Pr. 1203.

(*z*) As to the settlement of the articles or indenture of apprenticeship, see *ante* Nos. 1092—1099.

3. The said A. B. resides with his wife and family; and from my knowledge of him, and from inquiries I have made of various persons also acquainted with him, I believe the said A. B. to be a person of good moral character, of respectability and integrity, and well versed in the said profession [*Or*, trade] of a ——. In my judgment and opinion the said A. B. is a fit and proper person to have, and fully competent to instruct, an articled pupil [*Or*, apprentice] in the said profession [*Or*, trade].

4. The said A. B. is willing to take the said infant as an articled clerk [*Or*, apprentice] in his said profession [*Or*, trade] for a term of —— years, on being paid a premium of £——.

5. I have made inquiries of various persons engaged in the said profession [*Or*, trade] of a ——; and am informed by them, and believe, that the said premium of £—— is a reasonable and proper sum to be paid to a person in the position of the said A. B., for the purpose aforesaid.

6. The said infant will require an outfit on his being articled [*Or*, apprenticed]; and, from inquiries I have made on the subject, I believe the sum of £—— will be a necessary and proper sum to be expended for such outfit.

1213.

Articles of apprenticeship of an infant (*a*).

This indenture, made the —— day of ——, 187—, between A. B., of [*place of business and addition of the master*], of the one part, and E. H., of [*residence and addition*], the father of G. H.,

Or, the guardian of G. H., appointed by an order, dated the —— day of ——, 187—, of the High Court of Justice, in an action wherein the said G. H. is plaintiff, and X. Y., and others, are defendants,

Or, in a matter intituled, in the matter of —— [*or as may be*],

and the said G. H., an infant of the age of —— years, of the other part:

Whereas by an order of the High Court of Justice, made in the said action [*Or*, matter], and dated the —— day of ——, 187—, it was ordered that [*Recite the order approving the apprenticeship; as thus:*] the said infant should be placed out as an apprentice with the said A. B., for the term of —— years, for the purpose of being instructed in the trade of a ——; and that £—— should be allowed as a premium to be paid to the said A. B. on that occasion:

And whereas this indenture has been settled and approved by his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], the Judge to whom the said action [*Or*, matter] is attached, as an indenture proper to be executed by the several parties hereto for

(*a*) See Dan. Pr. 1203. For forms of articles, and assignment of articles, of clerkship to a solicitor, see Chitty's Forms, 3—5. As to the settlement of the articles or indenture of apprenticeship, see *ante* Nos. 1092 to 1099.

the purpose aforesaid: as appears by the certificate of the Chief Clerk of the said Judge, dated the —— day of ——, 187— [*Or*, by the memorandum (*aa*) in the margin hereof, signed by the Chief Clerk of the said Judge]:

[*If the execution of the indenture is to precede the drawing up of the order* (*b*), *substitute the following for the last recital:*]

And the Judge being of opinion that the indenture in the said order mentioned, and intended to be made between the parties therein named, and identified by the signature of his Chief Clerk in the margin of the engrossment thereof (meaning thereby these presents, and the memorandum in the margin hereof), was an indenture proper to be executed by the parties thereto for the purpose aforesaid, it was ordered that the said A. B., E. H., and G. H., should execute the same accordingly:

Now this indenture witnesseth, that the said G. H., pursuant to the said order, and of his own free will, doth hereby place and bind himself as an apprentice to the said A. B. in the said trade or business of a ——: to well and faithfully serve him from the date hereof, for the full term of —— years, thence ensuing. And the said A. B., in consideration of the sum of £——, to be paid to him in the manner in the said order mentioned [*or as may be*], and of the covenants and agreements herein contained on the part of the said E. H., doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. H. his executors and administrators, that he the said A. B. will accept and take the said G. H. as his apprentice for the term aforesaid; and will, to the best and utmost of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the said G. H. in his said trade or business of a ——; and will, at the expiration of the said term, in case the covenants and agreements on the part of the said E. H. shall have been duly performed, deliver up to the said G. H. this indenture, together with a certificate of the due and faithful service of the said G. H. thereunder; and that in case either of them the said A. B. and G. H. shall die during the first three years of the said term, he the said A. B., or his executors or administrators, will repay and return, to such person, or in such manner, as the said Court, or any Judge thereof, shall direct, the proportionate part following of the said premium of £——; namely: if such death shall happen during the first year of the said term, the sum of £——; and if during the second year thereof, the sum of £——; and if during the third year thereof, the sum of £——.

[*If the master is to make a periodical allowance to the apprentice, or to maintain or clothe him, &c., add a covenant by him to that effect.*]

And the said E. H. [*If so:* as such guardian as aforesaid], doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors, administrators, and assigns,

(*aa*) For form of memorandum, see *ante* No. 1117, margin.
(*b*) See Dan. Pr. 1203, note (*k*).

that the said G. H. will well and faithfully serve the said A. B., as his apprentice in his said trade or business, from the date hereof, for the full term of —— years, thence ensuing; and will not at any time during the continuance of the said term, destroy, embezzle, spend, or make away with any of the books, accounts, papers, moneys, or other property of the said A. B. And will, from time to time and at all times during the continuance of the said term, keep the secrets of the said A. B., and readily and cheerfully, obey and execute his lawful and reasonable commands: and will not, at any time during the continuance of the said term, absent himself from the service of the said A. B. without first obtaining his consent thereto; but will, during the said term, demean himself in all things towards the said A. B, and his family as a good and faithful apprentice.

[*If the father or guardian is to maintain, and clothe, &c., the infant during the term, add a covenant on his part to that effect.*]

In witness, *&c.*

(4.) *Marriage and Marriage Settlements* (*c*).

1214. Petition to interdict marriage of ward of Court (*d*).

Formal parts: see post No. 1578.

The humble petition of A. B., of [*residence and addition*], the guardian of the above-named plaintiff C. D., an infant [*or as may be*].

Showeth as follows:

1. [*Show how infant has become a ward of Court; as thus:*] This action has been instituted by the said plaintiff C. D., by E. F., her next friend, for the purpose of having the estate of G. D., deceased, the father of the said C. D., administered under the direction of this honourable Court. The said C. D. is, under the will of the said G. D., entitled to one fourth of the clear residue of his personal estate: which is of considerable value.

2. [*Show present age of infant; as thus:*] The said C. D. is now of the age of —— years: having been born on the —— day of ——, 18—.

3. [*Show appointment of guardian, if any; as thus:*] By an order made in this action, dated the —— day of ——, 187—, your petitioner was appointed the guardian of the said C. D. during her minority, or until further order.

4. [*Show the grounds for the belief that a clandestine marriage is in contemplation; and with whom; and, if so, that the intended wife, or husband, is not a fit person.*]

Your petitioner therefore humbly prays, that the

(*c*) See Dan. Pr. 10—13, 1206—1214.

(*d*) See Dan. Pr. 1207. For orders in like case, see Seton, ed. 3, 727, 728, 732. As to substituted service, see Dan. Pr. 1207, note (*g*).

said X. Y. and C. D. [*intended husband and wife*] may be restrained from intermarrying; and from having any interview, intercourse, or communication with each other, in any manner whatsoever.

Or that [*Conclude as in* No. 1578 *post, and add foot note,* No. 1579 *post*].

1215. Notice of motion to commit husband for marrying ward without consent (*e*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that A. B. of [*residence and addition*], may be committed to prison for a contempt of this honourable Court in having married the infant defendant E. F. [*or as may be*] without the leave of this Court.

1216. Notice of motion for inquiry as to validity of marriage of ward (*f*).

Formal parts: see post No. 1571.

on the part of A. B., the guardian of the above-named infant C. D. [*or as may be*], that an inquiry may be made whether the said infant C. D. has contracted a valid marriage with F. G., of [*residence and addition*], and under what circumstances; and in case a valid marriage has been contracted, that a proper settlement of the fortune of the said infant may be approved by the Judge.

1217. Petition for the like (*g*).

[*Proceed as in* No. 1214 *ante, to end of paragraph* 3.]

4. [*Show grounds for the belief that a marriage has taken place; with whom, when, and where; and by whose connivance.*]

Your petitioner therefore humbly prays, that an inquiry may be made whether the said infant C. D. has contracted a valid marriage with the said F. G., and under [*Continue as in* No. 1216 *ante, to the end*].

Or that [*Conclude as in* No. 1578 *post; and add foot note,* No. 1579 *post*].

(*e*) See Dan. Pr. 1207. For order in like case, see *Trevena* v. *Juliff*, M. R. 25 Mar. 1865, Reg. Lib. B. 613; and see Seton, ed. 3, 731. In the case cited, satisfactory evidence of the marriage having been given at the hearing of the application, an inquiry as to its validity was not directed; Dan. Pr. 1208, note (*m*).

(*f*) See Dan. Pr. 1207; and see Seton, ed. 3, 729, No. 4.

(*g*) See Dan. Pr. 1207. For order on adjourned petition of the guardian, requiring him and the infant and the infant's alleged wife, to attend in Court, and for an inquiry whether a valid marriage had been contracted, see *Holme* v. *Dudley*, V.-C. M. at Chambers, 14 Dec. 1866, Reg. Lib. A. 2588.

1218.
Petition under the Marriage Act, for judicial approval of a marriage (*h*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of A. B., an infant, by C. D., her next friend, and of the Act of Parliament 4th George the 4th, chapter 76, intituled "An Act for amending the laws respecting the solemnisation of marriages in England."

To Her Majesty's High Court of Justice.

The humble petition of the above-named infant A. B. by C. D., of [*residence and addition*], her next friend.

Showeth as follows :

1. Your petitioner is of the age of —— years : having been born on the —— day of ——, 18—.

2. Your petitioner is desirous to marry E. F., of [*residence and addition*] : who is of the age of —— years.

3. [*Show the special grounds for the application ; as thus :*] C. B., the father of your petitioner, is *non compos mentis*. He has been found of unsound mind by proceedings in lunacy ; and is at present an inmate in the asylum kept by L. M. for insane persons, at ——.

4. The fortune of your petitioner consists of the following particulars [*State them*]. It is intended that the fortune of your petitioner shall, on the said marriage, be vested in trustees on the usual trusts for your petitioner and the said E. F. successively for life ; with remainder to the children or remoter issue of their marriage ; with remainder to your petitioner if she survives the said E. F., and, if not, then, on his death, to her testamentary appointees, or statutory next of kin [*or as may be*].

5. The said proposed marriage is a fit and proper marriage for your petitioner ; but by reason of the mental incapacity of your petitioner's father [*or as may be*], the consent of this honourable Court to the said marriage is necessary under the provisions of the said Act.

Your petitioner therefore humbly prays, that it may be declared that the said intended marriage between your petitioner and the said E. F. is a fit and proper marriage within the intent and meaning of the said Act of Parliament ; and that your petitioner and the said E. F. may be at liberty to contract the same accordingly.

Or that [*Conclude as in* No. 1578 *post ; and add foot note,* No. 1579 *post*].

(*h*) See Dan. Pr. 1208 ; 4 Geo. IV. c. 76, s. 16. For orders in like case, see Seton, ed. 3, 733, Nos. 1, 2.

1219. Affidavit in support (*i*).

Formal parts: see ante No. 693.
1. [*Verify the statements in the petition.*]
2. [*Show means of knowledge.*]

1220. Affidavit of parent or guardian to found information under the Marriage Act for a forfeiture on a valid marriage improperly procured (*j*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the marriage solemnised between A. B. and C. D.; and of the Act of Parliament 4th George the 4th, chapter 76, intituled "An Act for amending the laws respecting the solemnisation of marriages in England."

I, G. B., of [*residence and addition*], make oath and say as follows:—

1. [*Show that the deponent is a parent or guardian; as thus:*] I am the father of the above-named A. B.;

Or, I am the testamentary guardian of the above-named A. B., appointed by the will of her father H. B., late of, *&c.; or as may be;*

and I am the relator to the action and information intended to be commenced by Her Majesty's Attorney [*Or*, Solicitor] General in respect of the above-mentioned marriage, under the provisions of the above-mentioned Act of Parliament.

2. [*Show marriage of parents; as thus:*] I [*Or*, The said H. B., deceased] was married to E. F., spinster, at the parish church of M., in the county of N., on the —— day of ——, 18—. The paper writing now produced and shown to me, and marked A. (*k*), and purporting to be a certified copy of an entry in the register book of marriages kept for the said parish of M., for the year 18—, relates to the said marriage.

3. [*Show that the infant is a child of the marriage, and the age; as thus:*] The said A. B. is one of the children of the said marriage. The said A. B. was born on the —— day of ——, 18—; and she is the same person as "A. daughter of H. and E. B.," named in the paper writing now produced and shown to me, and marked B. (*k*), and purporting to be a copy, under the seal of the General Register Office, of the certified entry No. ——, in the certified copy of entries of births in the district of I., in the county of L., for the year 18— [*or as may be*].

4. [*Show marriage of infant; as thus:*] On the —— day of ——, 187—, a marriage was solemnised at the parish church of O., in the county of P., between the above-named C. D., of [*residence and addition*], and the said A. B. The said A. B. and C. D. are respectively the same persons as "C. D. and A. B.," respectively named in the paper writing marked C. (*k*), now produced and shown to

(*i*) See Dan. Pr. 1209.

(*j*) See 4 Geo. IV. c. 76, s. 23; 6 & 7 Will. IV. c. 85, s. 43; 19 & 20 Vict. c. 119, s. 19; Dan. Pr. 10—13. For form of order, see Seton, ed. 3, 733, No. 3.

(*k*) Exhibit same. For memorandum of exhibit, see *ante* No. 723.

me, and purporting to be a certified copy of an entry in the register book of marriages kept for the said parish of O. for the year 187— [*or as may be*].

5. [*Show that the marriage has been solemnised in such manner, and under such circumstances, as are sufficient to authorise the bringing of the action and information; and that such marriage has been solemnised without the consent of the party or parties at whose relation the same is proposed to be brought, or of any other parent or guardian of the minor, to the knowledge or belief of the deponent; and that the deponent has not known or discovered that such marriage has been solemnised more than three months previous to the application to the Attorney or Solicitor-General* (*l*).]

6. [*Show means of knowledge.*]

Sworn [*&c.: see ante* No. 696 (*m*)].

1221.

Petition for leave for a ward of Court to marry (*n*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

[*Title of the action or matter in which the infant is a ward of Court; and, where applicable, add:*]
and in the matter of the Act of Parliament, 18th & 19th Victoria, chapter 43, intituled "An Act to enable infants, with the approbation of the Court of Chancery, to make binding settlements of their real and personal estate on marriage."

To Her Majesty's High Court of Justice.

The humble petition of the above-named infant E. F., by G. H., of [*residence and addition*], her testamentary guardian [*or as may be*].

Showeth as follows:

1—3. [*Show how the infant has become a ward of Court; the infant's age; and the appointment of a guardian, if any: as in* No. 1214 *ante.*]

4. [*Show, concisely, the state of the infant's fortune; and how invested; see par.* 3 *of* No. 1195 *ante.*]

5. J. K., of [*residence and addition*], has made proposals of marriage to your petitioner: which proposals she has, with the sanction and approval of her said guardian G. H., accepted, subject to the approbation of this honourable Court.

6. [*State, shortly, the age, rank, position in life, and fortune of the proposed husband.*]

Your petitioner therefore humbly prays, that an

(*l*) See 4 Geo. IV. c. 76, s. 23; Dan. Pr. 11.

(*m*) The oath may now be administered by a Record and Writ Clerk, or a commissioner to administer oaths in the Supreme Court of Judicature; 10 & 11 Vict. c. 97; 15 & 16 Vict. c. 87, s. 29; 16 & 17 Vict. c. 78, ss. 1—2; 36 & 37 Vict. c. 66, ss. 77, 82; see Dan. Pr. 11, note (*m*).

(*n*) See Dan. Pr. 1209. As to the marriage of wards of Court, with the sanction of the Court, and settlements thereon, see *Ibid.*, 1209—1211.

inquiry may be made whether the said proposed marriage is a fit and proper marriage for your petitioner; and, if so, that your petitioner and the said J. K. may be at liberty to lay proposals before the Judge in Chambers for a settlement on such marriage; and that a proper settlement of the property of your petitioner may be approved, and be executed by all necessary parties; and that, upon the due execution thereof, your petitioner and the said J. K. may be at liberty to intermarry.

[*Add prayer for direction as to taxation and payment of costs where desired.*]

Or that [*Conclude as in* No. 1578 *post; and add foot note,* No. 1579 *post*].

1222.
Summons for leave for a ward of Court to marry (*o*).

Formal parts: see ante No. 881.

on the part of the above-named infant, E. F., by G. H., her testamentary guardian [*or as may be*]:

1. That the applicant may be at liberty to accept proposals of marriage made to her by J. K., of [*residence and addition*].

2. That a proper settlement prior to such marriage may be settled and approved by the Judge.

3. That, upon the execution of such settlement by all necessary parties, the applicant and the said J. K. may be at liberty to intermarry.

4. [*Add clause as to taxation and payment of costs, where desired.*]

1223.
Proposals for a settlement (*p*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

The proposals of the infant E. F., and of J. K., for a settlement to be executed on their marriage.

1. The property of the said E. F. consists of [*State what; see par.* 3 *of* No. 1195 *ante*].

2. The property proposed to be settled by the said J. K. consists of [*State what*].

3. The trustees proposed on behalf of the said E. F. are, A. B., of [*residence and addition*], and C. D., of, *&c.*

(*o*) See *ante* No. 1221, note (*n*).

(*p*) See Dan. Pr 1210. A female ward should be empowered to provide for her children by a future marriage; *Rudge* v. *Winnall*, 11 Beav. 98; and see *Bathurst* v. *Murray*, 8 Ves. 74.

4. The trustees proposed on behalf of the said J. K. are, B. C., of, *&c.*, and X. Y., of, *&c.*

5. It is proposed to vest the whole of the fortune of the said E. F. in the said four trustees, upon the following trusts [*State the same shortly; as thus:*]

Upon trust for the said E. F. till the marriage; and after the marriage,

Upon trust to pay the income to the said E. F., for her separate use, but without power of anticipation, during the joint lives of the said E. F. and J. K.; and after the decease of either, to pay the income to the survivor for life.

After the death of the survivor, the corpus to be held in trust for the children or remoter issue of the marriage, as the said E. F. and J. K. shall jointly by deed, and, in default, as the survivor shall by deed or will, appoint; and subject to any such appointment, in trust for the children of the marriage equally: to vest in sons at twenty-one, and in daughters at twenty-one or marriage.

In default of issue, the corpus to be held in trust for the said E. F., if she survives the said J. K.; and if not, then in trust for her testamentary appointees, or statutory next of kin, as if she had never been married.

6. Power to be reserved to the said E. F., if she survives the said J. K., to make a settlement, out of her fortune, on a subsequent marriage: to the extent of one half, if but one child of the present marriage; and of one third, if two or more such children. The settlement to contain an agreement to settle any other or future property of the said E. F. amounting, at any one time, at the time of the acquisition thereof in possession, to £——: except plate, jewels, and similar articles: which excepted articles are to be held for her separate use.

7. [*Set out, in like manner, the proposed trusts of the property to be settled by the husband.*]

8. The settlement also to contain all such provisions as to maintenance, advancement, hotchpot, investment and transposition, appointment of new trustees and reimbursement, as the Judge may approve.

1224. Preparation and completion of the settlement (*q*).

[*See the following forms, ante: which can be readily adapted:*]

Direction to the conveyancing counsel to settle the draft: No. 1093.

Certificate on copy draft: No. 1016.

Affidavit of eligibility of the proposed trustees: No. 1088.

[Their

(*q*) See Dan. Pr. 1210. As to the settlement of deeds at Chambers, see *Ibid.*, 1146, and *ante* Nos. 1092—1099.

Their consent to act: No. 1089.
Affidavit verifying their signatures thereto: No. 1090.
Affidavit of examination of engrossment of the settlement: No. 1017.
Memorandum of identity: No. 1018.
Affidavit of the execution of the settlement: No. 1021.
Certificate of the execution thereof: No. 1022.

1225. Minute of order approving the settlement on a petition referred to Chambers (*r*).

Formal parts: see ante No. 1023.
Read: The within petition.
Affidavit of W. Y., filed ——, 187—, and the exhibit thereto, marked A., whereby it appears the petitioner, E. F., is of the age of —— years and upwards; the written consent of A. B., and C. D., hereinafter named to act as trustees; the affidavit of N. D., filed ——, 187—, verifying their signatures thereto; the affidavit of C. S., filed ——, 187—, and the exhibits marked K. and L. thereto [*Draft settlement, and engrossment*].
[*Add any further evidence adduced*].

The Judge being of opinion that the proposed marriage between J. K., in the petition named, and the infant E. F., is a fit and proper marriage for the said infant; and that the settlement proposed to be effected by the indenture hereinafter mentioned is a proper settlement to be made upon or in contemplation of such marriage; and that the indenture marked X., intended to be made between [*Set out the parties, as in the deed*], and identified by the signature of the Chief Clerk in the margin of the engrossment thereof, is a proper indenture for giving effect to such settlement, doth

[*If petition presented under* 18 & 19 Vict. c. 43, *add:*] pursuant to the said Act of Parliament, sanction and approve the same: and doth

order that the petitioner E. F. be at liberty, upon or in contemplation of her said marriage, to execute the said indenture; and that upon the execution thereof by the said E. F. and J. K. and [*other parties*]: such execution to be certified by the Chief Clerk: the said J. K. and E. F. be at liberty to intermarry [*Add any direction given as to the trust funds, or the costs*].

1226. Affidavit proving the marriage (*s*).

Formal parts: see ante No. 693.
1. J. K. and E. F. respectively named in the paper writing now produced and shown to me, and marked Y. (*t*) and purporting to be a certified copy of an entry in the register book of marriages kept for the parish of A., in the county of B., for the year 187—, of the marriage of J. K. and E. F., are respectively the same persons as J. K. and E. F., in the order made in this

(*r*) See Dan. Pr. 1210. For order in like case, see Seton, 722. The minute is usually indorsed on the original petition.
(*s*) See Dan. Pr. 1211.
(*t*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

action [*Or*, matter] dated the —— day of ——, 187—, respectively named: as I know [*State means of knowledge: as thus:*] from having been present at the said marriage.

1227.
Order approving marriage of ward, and settling fund without deed (*u*).

Formal parts.

And the Court being of opinion that the proposed marriage between the said A. B. and the said infant C. D. is a fit and proper marriage for the said infant; and it appearing that the property to which the said infant is entitled consists of £—— consolidated £3 per cent. annuities, and £ — reduced annuities, respectively in Court to the credit of (*&c., as in Paymaster-General's certificate*); and the Judge having approved the settlement hereinafter contained, as a proper settlement to be made of the said property upon or in contemplation of the said marriage, doth

[*If so:*] pursuant to the said Act of Parliament (*v*), sanction and approve the same; and doth

order that the Taxing Master do tax the costs of the infant of this application, and incident thereto; and that upon production of the Chief Clerk's certificate of the solemnisation of the said marriage, so much of the said £—— consolidated £3 per cent. annuities as will raise the said costs and £50, be sold; and that out of the money to arise from such sale the said costs be paid to Mr. E. F., the applicant's solicitor, and the said £50 be paid to G. H., the guardian of the said infant, for the outfit of the said infant: he undertaking duly to apply the same; and that the residue of the said consolidated annuities, and the said £—— reduced annuities, be carried over to the credit of this action, F. *v.* F., 187—, F. No. ——, to an account to be entitled "The account of the settlement of C., the wife of A. B., and her children"; and be thenceforth held upon the following trusts; namely: upon trust for the said C. D. for her life, and, during any coverture, for her separate use, without power of anticipation. And after her decease, in case the said A. B. shall survive her, upon trust for him for his life. And after the decease of the survivor of them, upon trust for all or any one or more, exclusively of the other or others, of the children of the said C. D., by her said intended or any future marriage, as she shall, by deed or will, appoint; and in default of such appointment, and in so far as no such appointment shall extend, in trust for all the children, or the child, of the said intended marriage who being sons or a son shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age, or marry under that age; and if more than one in equal shares. And in case there shall be no such child who, being a son, shall attain the said age, or, being a daughter, shall attain that age or be married, then, in case the said C. D. shall die

(*u*) For order in like case, see *Fitchew* v. *Fitchew*, M. R. at Chambers, 20 Dec. 1864, Reg. Lib. A. 2526.

(*v*) 18 & 19 Vict. c. 43.

under coverture, in trust for such person or persons as she shall, by her last will, appoint; and in default of such appointment, in trust for the next of kin of the said C. D., according to the statutes for the distribution of the estates of intestates, as if she had never been married; but in case she shall survive her present or any future husband, then in trust for the said C. D., her executors, administrators, and assigns. And any of the said children who shall take appointed shares shall bring such appointed shares into hotchpot, with their brothers and sisters taking in default of appointment. And it is ordered that, after the said intended marriage, the dividends as they accrue due on the said annuities to be carried over as aforesaid during the life of the said C. D. be paid to the said C. D. for her separate use, until further order.

1228. Petition for sanction to a settlement under 18 & 19 Vict. c. 43, where the infant is not a ward of Court (*x*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of E. F., an infant, by G. H. her next friend [*Or,* guardian]; and of the Act of Parliament, 18th & 19th Victoria, chapter 43, intituled [*&c.: as in* No. 1221 *ante*].

To Her Majesty's High Court of Justice.

The humble petition of the above-named E. F., an infant, by the said G. H., of [*residence and addition*], her next friend [*Or,* guardian].

Showeth as follows:

1. [*State the infant's age; as thus:*] Your petitioner is of the age of —— years: having been born on the —— day of ——, 18—.

2. [*State whether the infant has any parent or guardian; and with whom, or under whose care the infant is living; as thus:*] Your petitioner has no father now living; and no testamentary guardian, and no guardian appointed by this honourable Court. She is now residing with her mother, M. A. F., of [*residence*], widow.

3. [*Show, concisely, the state of the infant's fortune; and how interested; as thus:*] Your petitioner is entitled under the will of her father H. F., late of, *&c.*, deceased, expectant on her attaining the age of twenty-one years, or marrying sooner, to [*State what*].

4. [*State proposed marriage; as thus:*] J. K., of [*residence and addition*], has made proposals of marriage to your petitioner: which she has, with the approbation of her said mother, accepted.

5. [*State, shortly, the age, rank, position in life, and fortune of the proposed husband.*]

(*x*) See Dan. Pr. 1211—1214; 18 & 19 Vict. c. 43. As to adjourning the petition into Chambers, and the practice thereon, see Dan. Pr. 1212. For form of summons to proceed on an adjourned petition, see *ante* No. 1191.

6. Your petitioner is desirous, with the sanction of this honourable Court, upon or in contemplation of her marriage with the said J. K., to make a valid and binding settlement of her property.

Your petitioner therefore humbly prays, that a proper settlement of your petitioner's property may, under or by virtue of the said Act of Parliament, be sanctioned by this honourable Court; and that your petitioner may be at liberty, upon or in contemplation of her said marriage, to execute such settlement.

Or that [*Conclude as in* No. 1578 *post, and add foot note,* No. 1579 *post.*]

1229.

Affidavit in support of the petition (*y*).

Formal parts: see ante No. 695.

We, M. A. F., of [*residence*], widow, and H. K., of [*residence and addition*], severally make oath and say as follows:—

And first I the said M. A. F. for myself say as follows:—

1. [*Show the infant's age; as thus:*] I am the mother of the above named infant E. F.: she was born on the —— day of ——, 18—(*z*).

2. [*Show whether the infant has any parents or guardians; as thus:*] My husband H. F., the father of the said infant E. F., died on the —— day ——, 187—. The said E. F. has no testamentary guardian, and no guardian appointed by this honourable Court.

3. [*Show with whom, or under whose care, the infant is living; and, if the infant has no parents or guardians, what near relations the infant has; as thus:*] Since the death of my said husband, the said E. F. has resided, and is now residing, with me at ——, aforesaid.

4. [*Show the rank and position in life of the infant and parents; as thus:*] My said late husband, H. F., at the time of his death, and for many years prior thereto, carried on an extensive business as a shipowner and general merchant.

5. [*Show what the infant's property and fortune consist of; as thus:*] Under the will of the said H. F. the said E. F. is entitled,

(*y*) See Dan. Pr. 1213. When the petition is adjourned to Chambers, evidence must be produced to show:—(1). The age of the infant; (2). Whether the infant has any parents or guardians; (3). With whom, or under whose care, the infant is living; and, if the infant has no parents or guardians, what near relations the infant has; (4). The rank and position in life of the infant and parents; (5). What the infant's property and fortune consist of; (6). The age, rank, and position in life of the person to whom the infant is about to be married; (7). What property, fortune, and income such person has; (8). The fitness of the proposed trustees, and their consent to act; Regul. 8 Aug. 1857, rule 20; Dan. Pr. 1213.

(*z*) If any other person than the mother makes the affidavit, a certificate of the birth or baptism should be produced, and the infant identified therewith, by the affidavit. For form of affidavit, see *ante* No. 1220, par. 3.

contingently upon her attaining the age of 21 years, or marrying sooner, to the following properties : [*State what.*]

6. J. K., of [*residence and addition*], has made proposals of marriage to my said daughter E. F. Such marriage will, in my judgment and belief, be a proper and eligible marriage for my said daughter, and it has received my sanction.

7. [*Show means of knowledge.*]

And I, the said H. K., for myself say as follows :—

8. [*Show the age, rank, and position in life of the person to whom the infant is about to be married : as thus :*] I am the father of J. K., of [*residence and addition*], the person who has made proposals of marriage to the said E. F. The said J. K. is of the age of —— years. The said J. K. is a solicitor of the Supreme Court ; and has been in practice as such for —— years last past. His professional income for the last —— years has amounted, as I am informed by him and believe, to the sum of £—— per annum or thereabouts.

9. [*Show what property, fortune, and income such person has : as thus :*] My said son is entitled, on the death of the survivor of me and L. K., my wife, under the trusts of the indenture of settlement made on our marriage, and dated the —— day of ——, 18—, to one-third share of and in [*Set out particulars of the trust property, and of any other property to which the intended husband may be entitled*].

10. [*Show means of knowledge.*]

Sworn [*&c. : see ante* No. 696 *or* 698].

1230. Preparation and completion of the settlement (*x*).

[*See the forms referred to in* No. 1224 *ante : which can be readily adapted.*]

1231. Minute of order sanctioning settlement (*y*).

[*Proceed as in* No. 1225 *ante, to the end of the statement of the evidence ; and continue thus :*]

And the Court being of opinion that the settlement proposed to be effected by the indenture hereinafter mentioned is a proper settlement to be made upon or in contemplation of the intended marriage of the infant petitioner E. F., with J. K., in the petition named, of the property of the said infant comprised therein ; and that the indenture, marked X., intended to be made between [*Set out the parties, as in the settlement*], and identified by the signature of the Chief Clerk in the margin of the engrossment thereof, is a proper indenture for giving effect to such settlement, doth, pursuant to the said Act of Parliament, sanction and approve the same ; and doth order that the petitioner E. F. be at liberty,

(*x*) For form of proposals for a settlement, see *ante* No. 1223.

(*y*) See Dan. Pr. 1214. For order in like case, see Seton, ed. 3, 723, No. 2.

upon or in contemplation of her marriage with the said J. K., to execute the said indenture accordingly.

1232.

Recital in the settlement of the order approving the same (*z*).

And whereas by an order of the High Court of Justice, made in the matter of E. F., an infant, by [*Set out the title of the order*], and dated the —— day of ——, 187—, after premising that the Judge was of opinion that the settlement [*Recite the rest of the order approving the settlement: but add, after* engrossment thereof, *the words* (meaning thereby these presents, and the signature in the margin hereof)].

1233.

Petition for the appointment of a guardian and allowance for maintenance of a person of unsound mind not so found (*b*).

SECTION VI.—PERSONS OF UNSOUND OR WEAK MIND, NOT SO FOUND (*a*).

Formal parts: see post No. 1578.

The humble petition of A. B., a person of unsound mind not so found, by C. D., of [*residence and addition*], his next friend.

Showeth as follows:

1. [*Show state of mind of the petitioner: as thus:*] Your petitioner is a person of weak or unsound mind; but he has not been so found by inquisition or other proceeding in lunacy.

2. [*Show the age of the petitioner.*]

3. [*Show the nature and amount of the petitioner's fortune* (*c*).]

4. [*Show what relations the petitioner has.*]

5. [*Show where the petitioner is residing, and under whose care.*]

6. It will be for the benefit and advantage of your petitioner that the said C. D. should be appointed to act as the guardian of his person; and that an allowance of £—— should be made for his maintenance out of the income of his said property.

Your petitioner therefore humbly prays:

1. That the said C. D., or some other proper person, may be appointed to act as the guardian of the person of your petitioner until further order.

2. That the costs of this application may be taxed, and raised and paid out of the said £——, consolidated £3 per cent. annuities [*or as may be*].

[3.

(*z*) See Dan. Pr. 1214.

(*a*) As to the original jurisdiction of the Court of Chancery, and now of the High Court, in respect of the guardianship and maintenance of persons of unsound mind not so found, see Dan. Pr. 1214, 1215; *Vane* v. *Vane*, 2 Ch. D. 124; *Bligh* v. *O'Connell*, 26 W. R. 311.

(*b*) See Dan. Pr. 1214. The allegations suggested in this form can easily be framed from No. 1195 *ante*.

(*c*) It is not necessary that the fund should be in Court; *Vane* v. *Vane*, 2 Ch. D. 124.

3. That out of the dividends as they accrue on the residue of the said annuities, the annual sum of £—— may be allowed for the maintenance of your petitioner; and be paid half-yearly on the —— day of ——, and *&c.*, to his said guardian, during the life of your petitioner or until further order.

4. That the residue of the dividends to accrue on the said annuities may be from time to time invested in like annuities.

Or that [*Conclude as in* No. 1578 *post; and add foot note,* No. 1579 *post*].

1234. Summons for the like (*e*).

Formal parts: see ante No. 881.

on the part of A. B., a person of unsound mind not so found, by C. D., of [*residence and addition*], his next friend:

1. That the said C. D., or some other proper person, may [*Continue as in the prayer of* No. 1233 *ante, to the end of clause* 4 *thereof; substituting the words* "the applicant" *for the words* "your petitioner;" *and describing distinctly the fund to be operated upon*].

1235. Affidavit in support of petition or summons (*e*).

Formal parts: see ante No. 693.

1. [*See ante* Nos. 1195 *and* 1209.]

2. [*Prove by a medical man the present state of mind of the petitioner or applicant: see ante* No. 141 *paragraphs* 6, 7, 8.

1236. Petition under the Pauper Lunatic Acts, for payment of maintenance out of a fund in Court (*f*).

Formal parts: see post No. 1578.

The humble petition of A. B., of [*residence and addition*], treasurer of the county of C. [*or as may be*].

Showeth as follows:

1. [*State the lunatic's title to the fund in Court, sought to be dealt with*].

2. [*State how the lunatic has become chargeable to the parish, union, or county*].

3. [*State the expense incurred in his maintenance, &c.; and any order made by the Justices for the repayment thereof*].

Your petitioner therefore humbly prays, as follows:

1. That the costs of your petitioner of and relating to this application may be taxed, as between solicitor and client.

2. That the said £—— [*Describe the fund in Court*] may be sold.

(*e*) See Dan. Pr. 1214.

(*f*) 7 & 8 Vict. c. 101, s. 27; 8 & 9 Vict. c. 100, s. 95; 12 & 13 Vict. c. 103, s. 16; 16 & 17 Vict. c. 97, ss. 94—104; and Dan. Pr. 1215; Seton, ed. 3, 1109—1111. For form of order for payment to the treasurer of a county of a sum for past maintenance, and of future maintenance, from time to time: the amount to be verified by affidavit: see Seton, ed. 3, 1109. As to the evidence in support of an application under these acts, see Seton, ed. 3, 1110.

3. That out of the money to arise by such sale, the said costs may be paid to the solicitor of your petitioner; and that the residue of such money may be paid to your petitioner as treasurer of the said county of C. [*or as may be*], in part satisfaction of the said sum of £—— due to him as aforesaid, in respect of the said lunatic E. F.

Or that [*Conclude as in* No. 1578 *post; and add foot note,* No. 1579 *post*].

1237.
Summons for the like (*g*).

Formal parts: see ante No. 881.
on the part of A. B. [*&c.: as in* No. 1236 *ante*]:

1. That the costs of the said A. B., of and relating to this application, may be taxed as between solicitor and client.

2. That the £—— [*Describe the fund: according to the Paymaster-General's voluntary certificate*] may be sold.

3. That out of the money to arise by such sale, the said costs may be paid to the solicitor of the said A. B.

4. That the residue of such money may be paid to the said A. B., as treasurer of the county of C. [*or as may be*], in part satisfaction of the sum of £—— due to him for the maintenance and support, to the —— day of ——, 187—, of (the said) E. F., a pauper lunatic.

Section VII.—The Chief Clerk's Certificate (*h*).

1238.
Chief Clerk's certificate of the result of accounts and inquiries, under a judgment in an action for general administration of a testator's estate (*i*).

In the High Court of Justice,
Chancery Division.
[*Title of the action or matter, and reference to the record.*]

In pursuance of the directions given to me by the Master of the Rolls [*Or,* Vice-Chancellor ——], I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment [*Or,* order] made in this action [*Or,* matter] dated the —— day of ——, 187—, is as follows:

(*g*) See note (*f*) to No. 1236 *ante*.

(*h*) As to general and separate certificates by the Chief Clerk of the result of proceedings before him, see Dan. Pr. 1215—1227; 15 & 16 Vict. c. 80, s. 32; Cons. Ord. XXXV. 45—56.

(*i*) See Dan. Pr. 1215, 1216. The form here given is adapted from the form in Sched. M. to Cons. Ord.: which may be used with such variations as the circumstances of the case may require; Cons. Ord. XXXV. 48. As to the form and contents of the certificate, see generally, Dan. Pr. 1216, 1217; Cons. Ord. XXIII. 15; XXXV. 48. For other forms of certificates, see *Index,* Certificate (Chief Clerk's).

Parties attending (*j*).

The plaintiffs and defendants,
except the defendant X. Y. : who has not, nor has any person on his behalf, attended, although duly summoned, as by the affidavit of W. U., filed ——, 187—, appears,
and also A. B. and C. D. : who, having been served with notice of the said judgment [*Or*, order], by an order, dated the ——, 187—, had liberty to attend the proceedings (*j*) : have attended by their respective solicitors.

Service of notice of judgment (*k*).

Notice of the said judgment [*Or*, order] of the ——, 187—, has been served upon E. F. and G. H.

Members of a class.

The persons so served and attending as aforesaid include all the residuary legatees now living of J. K., the testator in the said judgment [*Or*, order] of the ——, 187—, named, and the legal personal representatives of such of them as are dead : except such as are parties to this action ; and except L. M. and N. O. hereinafter named.

Service dispensed with (*kk*).

Service of notice of the said judgment [*Or*, order] upon the said L. M. and N. O. was dispensed with [*or as may be*].

The evidence produced relative to such service and dispensing with service consists of the Record and Writ Clerk's certificate dated ——, 187—, and of the affidavit of S. T., filed ——, 187— (*l*).

(1). Personal estate account (*m*).

1. The defendant P. R., one of the executors of the said testator J. K., has received personal estate [*If so:* not specifically bequeathed] of the said testator to the amount of £—— ; and he has paid, or is entitled to be allowed on account thereof, sums to the amount of £—— ; leaving a balance due from him of £—— on that account.

Reference to account.

Variations from account.

The particulars of the above receipts and payments appear in the account marked A. (*n*), verified by the affidavit of the defendant P. R., filed the ——, 187—, and which account is to be filed with this certificate ; except that in addition to the sums appearing in the said account to have been received, the said defendant is charged with the following sums, namely : [*Specify them*] ; and except that of the items of disbursement in the said account, I have disallowed those numbered 18 and 23 ; and I have deducted £5 from the item numbered 11, and £3 from the item numbered 15 ; and in addition to the items appearing in the said account, the said defendant has paid and been allowed the following sums ; namely : [*Specify them*].

(*j*) As to obtaining leave to attend proceedings, see *ante* Nos. 34, 971, 972.

(*k*) As to such service, see *ante* note (*a*) at p. 17.

(*kk*) See *ante* No. 20 and note thereto.

(*l*) It must be shown by the affidavit of service, or otherwise, that the persons appearing by the Record and Writ Clerk's certificate to have been served are the same as the persons directed or required to be served : as the certificate alone is insufficient for this purpose ; see *ante* No. 28, par. 4.

(*m*) See *ante* Nos. 1026, 1029, 1030.

(*n*) See *ante* No. 1027.

Reference to a transcript (*o*).

[*Where a transcript is to be filed, substitute for the above, the following:*] The defendant P. R. has brought in his account, marked A., of his said receipts and payments, verified by his affidavit filed the ——, 187—, and which account is to be filed with this certificate. The said account marked A. has been altered; and the account marked A. B., which is also to be filed with this certificate, is a transcript of the said account marked A. as altered and passed.

Special allowances in account.

The payments allowed to the defendant P. R. include the sum of £—— paid by him on the —— day of ——, 187—, into Court to the credit of this action, pursuant to an order dated ——, 187—. Such payments also include sums invested by the said defendant in the purchase of £——, consolidated £3 per cent. annuities in his name; and which sum of annuities the said defendant on the ——, 187—, transferred into Court to the credit of this action, pursuant to an order dated ——, 187—.

No personal estate received (*p*).

The defendant V. D., the other executor of the said testator, has not, nor has nor have any person or persons by his order, or for his use, received any part of the personal estate [*If so:* not specifically bequeathed] of the said testator.

(2). Funeral expenses (*q*).

2. The funeral expenses of the testator, amounting to the sum of £——, have been paid, and are allowed the defendant P. R., the executor of the said testator, in the said account of personal estate.

(3). Debts (*r*).

3. The debts of the testator which have been allowed are set forth in the first schedule hereto (*s*); and, with the interest thereon and costs mentioned in the said schedule, are due to the persons therein named, and amount altogether to £——. No other person has come in and proved any debt against the estate of the testator; and the time fixed by advertisement (*t*) for that purpose has expired. Such of the said debts as are judgment debts are set forth in the first part of the said schedule, and amount to £——; and the rest of such debts are set forth in the second part of such schedule, and amount to £—— (*u*).

Interest thereon.

The interest on such debts is computed down to the date of this certificate, and after the rate of £4 per cent. per annum, from the ——, 187—, the date of the said judgment [*Or*, order]: unless otherwise specified in the said schedule.

No debts.

[*Or, if no debts:*] There is not any debt of the said testator remaining unpaid. No person has come in and proved any debt

(*o*) See Dan. Pr. 1217; Cons. Ord. XXXV. 46.
(*p*) See *ante* Nos. 1032—1034.
(*q*) See *ante* No. 1026 (2).
(*r*) See *ante* Nos. 977 to 998.
(*s*) See *ante* No. 998.
(*t*) See *ante* No. 977.
(*u*) See 32 & 33 Vict. c. 46; *Re Williams, Williams* v. *Williams*, L. R. 15 Eq. 270.

against the estate of the said testator, and the time fixed by advertisement for that purpose has expired.

Advertisements for creditors (*x*).

Advertisements have been published in the "London Gazette" of the ——, 187— ; in the [*State in what other newspapers, and of what dates*].

(4). Legacies and annuities (*y*).

4. The legacies given by the testator: other than annuities: are set forth in the first part (*z*) of the second schedule hereto; and, with the interest therein mentioned, remain due to the persons therein named, and amount altogether to £——. The annuities given by the testator, with the arrears due thereon, are set forth in the second part (*a*) of the said second schedule. Such arrears amount to £——.

Interest on legacies (*b*).

The interest on such legacies is computed down to the date of this certificate, and after the rate of £4 per cent. per annum from the ——, 187—, the end of one year after the testator's death: unless otherwise specified in the said schedule.

Arrears of annuities (*c*).

The arrears of the said annuities are computed down to the date of this certificate, and from the testator's death: unless otherwise specified in the said schedule.

(5). Outstanding estate (*d*).

5. The personal estate of the testator [*If so:* not specifically bequeathed] outstanding or undisposed of, consists of the particulars set forth in the third schedule hereto (*e*).

(6). Real estate (*f*).

6. The real estate which the testator was seised of, or entitled to, at the time of his death [*or as may be*] consists of the particulars set forth in the fourth schedule hereto (*g*).

(7). Incumbrances on real estate (*h*).

7. The incumbrances affecting the said testator's real estate are set forth in the fifth schedule hereto (*i*).

(8). Rents and profits account (*k*).

8. The defendant P. R., one of the trustees named in the said judgment [*Or*, order], has received rents and profits of the testator's real estate to the amount of £—— ; and he has paid, or is entitled to be allowed on account thereof, sums to the amount of £—— : leaving a balance due from him of £—— on that account. The particulars of the above receipts and payments appear in the

(*x*) See *ante* No. 677.
(*y*) See *ante* Nos. 1001, 1002.
(*z*) See *ante* No. 1001.
(*a*) See *ante* No. 1002.
(*b*) See *ante* No. 1001, note (*q*).
(*c*) See *ante* No. 1002, note (*r*).
(*d*) See *ante* Nos. 1026 (4), 1029, 1030.
(*e*) See *ante* No. 1026, Sched. 2.
(*f*) See *ante* No. 1026 (5), 1031.
(*g*) See *ante* No. 1026, Sched. 3.
(*h*) See *ante* Nos. 1026 (6), 1031.
(*i*) See *ante* No. 1026, Sched. 4.
(*k*) See *ante* Nos. 1026 (7), 1029, 1031.

account marked B. (*l*), verified [*&c.: Continue as in the clause* (1) *above as to personal estate received, in so far as applicable*].

No rents and profits received(*m*).

The defendant V. D., the other trustee named in the said judgment [*Or*, order], has not, nor has nor have any person or persons by his order, or for his use, received any sum or sums of money on account of the rents and profits of the testator's real estate.

Statement of the evidence produced on each account and inquiry.

[*After each statement, the evidence produced is to be stated; as follows:*]

The evidence produced on this account [*Or*, inquiry] consists of [*State what; as thus:*] the probate of the testator's will; the affidavit of A. B., filed ——, 187—; and paragraph 16 of the affidavit of C. D., filed ——, 187—.

Dated this —— day of ——, 187—.

R. M., Chief Clerk.

Approved this —— day of ——, 187—.

[*Signature of Judge.*]

The first schedule above referred to.

[*Insert particulars of debts allowed: see ante* No. 998.]

The second schedule above referred to.

[*Insert particulars of legacies and annuities: see ante* Nos. 1001, 1002.]

The third schedule above referred to.

[*Insert particulars of the outstanding estate: see ante* No. 1026, *and 2nd schedule thereto.*]

The fourth schedule above referred to.

[*Insert particulars of the real estate: see ante* No. 1026, *and 3rd schedule thereto.*]

The fifth schedule above referred to.

[*Insert particulars of the incumbrances affecting the real estate: see ante* No. 1026, *and 4th schedule thereto.*]

1239.

Summons to settle the draft of the certificate (*n*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be: see ante* No. 968], to settle the draft of the Chief Clerk's certificate, under the judgment [*Or*, order] dated the —— day of ——, 187—.

1240.

Notice of appointment to settle the draft certificate (*n*).

In the High Court of Justice,

Chancery Division.

[*Title of the action or matter, and reference to the record.*]

Take notice that the Chief Clerk of his lordship the Master of

(*l*) See *ante* No. 1028.

(*m*) See *ante* Nos. 1032, 1033.

(*n*) See Dan. Pr. 1218. As to the preparation and settlement of the draft

the Rolls [*Or*, the Vice-Chancellor ——], has appointed (Monday), the —— day of ——, 187—, at —— of the clock in the ——noon, at his Chambers in the Rolls' Yard [*&c.:*] to settle the draft of his certificate under the judgment [*Or*, order] dated the —— day of ——, 187—.

1241. Statement of objections to certificate (*nn*).

In the High Court of Justice,
Chancery Division.
[*Title and reference to record.*]

The following is a statement of the objections of the plaintiff [*or as may be*] to the certificate under the judgment [*Or*, order] dated the —— day of ——, 187—.

1. That, *&c.*
2. That, *&c.*

Dated —— day of ——, 187—.

1242. Summons to take the opinion of the Judge (*o*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be: see ante* No. 968], to take my opinion upon the result of the proceedings under the judgment [*Or*, order] dated the —— day of ——, 187—, as certified by the certificate of my Chief Clerk dated the —— day of ——, 187— ; and that the said certificate may be reviewed or altered in the following respect, that is to say : [*State how ; as thus :*]

by stating in the first paragraph of the said certificate that the amount received by the applicant in manner therein mentioned is the sum of £1,548, and not the sum of £2,048 as therein stated ;

and that such consequential corrections and alterations may be made in the said certificate as may be necessary.

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certificate, and when a summons, and when a notice of the appointment to settle the draft is required, and as to transcribing the draft, see *Ibid.*, 1219 ; Cons. Ord. XXXV. 48. No fee is payable on a certificate, except on a certificate of the result of taking an account, as to which, see *ante* p. 551, note (*z*).

(*nn*) A party who is dissatisfied with the certificate and intends to apply to vary it, must, before it is signed, carry into Chambers a short statement in writing of his objection thereto, and obtain an appointment to consider the same.

(*o*) See Dan. Pr. 1218 ; Seton, ed. 4, 68. As to applications to take the opinion of the Judge on the certificate, and the time allowed for that purpose, see Dan. Pr. 1219, 1220 ; 15 & 16 Vict. c. 80, s. 33 ; Cons. Ord. XXXV. 45, 49, 50, 53, 54 ; XXXVII. 11. As to the approval and signature of the Judge, see Dan. Pr. 1220 ; 15 & 16 Vict. c. 80, s. 32 ; Cons. Ord. XXXV. 51. As to the approval by a Judge, during vacation, of a certificate made by another Judge's Chief Clerk, and as to applications to vary the same, see Dan. Pr. 1221, 1222 ;

1243.
Summons to vary certificate (*p*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*or as may be: see ante* No. 968], that the certificate of my Chief Clerk dated the —— day of ——, 187—, of the result of the proceedings under the judgment [*Or*, order] dated the —— day of ——, 187—, may be varied or altered as follows; namely: [*State how; as thus:*]

by disallowing the debt, interest, and costs, amounting together to £——, thereby certified to be due to D. E.;

and that such consequential directions may be given, or corrections and alterations made in the said certificate, as may be necessary.

1244.
Note of adjournment of the summons to vary, to come on in Court (*q*).

Formal parts: see ante No. 1005.
The summons to vary the certificate in this action [*Or*, matter] is adjourned into Court; and is to be set down in the cause book: to come on at the same time as this action [*Or*, matter] is to be heard on further consideration.

Or, and is to come on at the same time as the petition of the plaintiff presented on the —— day of ——, 187—, in this action [*Or*, matter] comes on for further hearing [*or as may be.*]

1245.
Notice of such summons having been set down to come on with the action on further consideration (*q*).

Formal parts: see ante No. 881.
Take notice that the summons dated the —— day of ——, 187—, taken out on behalf of the plaintiff [*or as may be*], to vary the Chief Clerk's certificate dated the —— day of ——, 187— and which was adjourned into Court, has been this day set down in the cause book: to come on at the same time as this action [*Or*, matter] is to be heard on further consideration.

1246.
The like, to come on with an adjourned petition (*q*).

[*Proceed as* No. 1245 *ante, to* Court; *and add:*]
has been this day set down in the Registrar's paper of adjourned petitions: to come on at the same time as the petition of the plaintiff [*or as may be*], presented on the —— day of ——, 187—, in this action [*Or*, matter] comes on for further hearing.

Cons. Ord. XXXV. 59. As to the filing of the certificate, see Dan. Pr. 1221; 15 & 16 Vict. c. 80, s. 34; Cons. Ord. I. 44—47, 49; XXXV. 55, 56. As to office copies, see Dan. Pr. 1221; Cons. Ord. I. 44; XXXVI. 1, 2.

(*p*) See Dan. Pr. 1222; Seton, ed. 4, 68. As to applications to vary a certificate, and the time allowed for that purpose, and as to opening a certificate after it has become binding, see *Ibid.*, 1222, *et seq.*; 15 & 16 Vict. c. 80, s. 34; Cons. Ord. XXXV. 52—54; XXXVII. 11, 12. For orders in like case, see Seton, ed. 4, pp. 40, 41, Nos. 1, 2, 3; p. 67, Nos. 1, 2, 4, 5.

(*q*) See Dan. Pr. 1224.

1247. Notice of motion to vary certificate (*r*).

Formal parts: see post No. 1571.
on the part of the plaintiff [*or as may be: see ante* No. 968], that the certificate of the Chief Clerk dated the —— day of ——, 187— [*Continue as in* No. 1243 *ante, to the end*].

1248. Direction to file copy certificate, in place of original, where original lost (*s*).

I certify that this is a true copy of a certificate which was duly (stamped,) signed, and approved.

R. M., Chief Clerk.

Let this be put on the files of the Court as of the ——, 187— [*Date when original certificate due*].

[*Signature of Judge.*]
——, 187—.

(*r*) See Dan. Pr., 1222, 1225; Seton, ed. 4, 68. As to the time for which the notice should be given, see *Ibid.*, 1224, 1225, note (*n*). For orders in like case, see Seton, ed. 4, p. 40, No. 1; p. 67, Nos. 3, 4, 5.

(*s*) *Re Perkins, Perkins* v. *Perkins*, M. R. at Chambers, 26 July, 1870. The certificate and fiat were written in the margin of the first page of the copy certificate.

CHAPTER XVII.

HEARING ON FURTHER CONSIDERATION (*a*).

1249.
Request that action commenced by writ may be set down for further consideration (*b*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

I request that this action, the further consideration whereof was adjourned by the judgment [*Or*, order] of the —— day of ——, 187—, may be set down for further consideration before his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——]. Dated this —— day of ——, 187—.

C. D., solicitor for the plaintiff [*or as may be; see ante* No. 968].

1250.
Consent of all parties to the action being set down prematurely (*c*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

We request and consent that this action, the further consideration whereof was adjourned by the judgment [*Or*, order] of the —— day of ——, 187—, be set down forthwith for further consideration before his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], notwithstanding eight days have not expired since the Chief Clerk's certificate was filed.

[*If so:*] and that this action may be placed in the paper of short actions for hearing before the said Judge on the next short cause day [*Or*, on the —— day of ——, 187—].

Dated [*&c.: Conclude as in* No. 774 *ante*].

(*a*) As to further consideration generally, see Dan. Pr. 1228—1237; Seton, ed. 4, 41—43. For forms of directions adjourning further consideration, see Seton, ed. 4, 71. As to the proof on further consideration of matters not directly in issue, see Dan. Pr. 1229, 1236, 1237; 13 & 14 Vict. c. 35, s. 28. For the practice as to drawing up, passing and entering an order on further consideration, see Dan. Pr. 1237; and see *ante* Nos. 852—857, and notes thereto. As to the papers to be left on bespeaking the order, see Dan. Pr. 1237; Cons. Ord. I. 20; Reg. Regul. 15 Mar. 1860, rules 16, 17, 29, 30. For forms of orders on further consideration, see Seton, ed. 4, pp. 40, 41. On drawing up and entering the order, a fee is payable of 10*s.* on the lower scale, and £1 on the higher scale, by means of a stamp impressed upon or adhesive to the order; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April 1876; Wilson, 506, 522. As to enforcing the order, see *post* note (*a*) at p. 687.

(*b*) See Dan. Pr. 1233; Cons. Ord. XXI. 10. For the mode of setting down the action, see Dan. Pr. 1233; Reg. Regul. 15 Mar. 1860, rules 1, 9.

(*c*) See Dan. Pr. 1233, note (*r*).

1251. Notice that the action has been set down (*d*).

Formal parts: see ante No. 21.

Take notice that this action, the further consideration whereof was adjourned by the judgment [*Or*, order] of the —— day of ——, 187—, was this day [*Or*, on the —— day of ——, 187—] set down for further consideration before his lordship the Master of the Rolls [*or as may be*], for the —— day of ——, 187—.

1252. Certificate of counsel that action is fit to be heard as short (*f*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

I certify that this action is fit to be heard on further consideration as a short action.

X. Y., counsel for the plaintiff,
——, 187—.

1253. Notice that action has been marked as short (*g*).

Formal parts: see ante No. 21.

Take notice that this action has been marked for hearing on further consideration as a short action in the Registrar's book of causes standing for hearing.

1254. Consent to action being prematurely heard (*h*).

In the High Court of Justice,
Chancery Division.

[*Short title, and reference to the record.*]

We consent to this action being placed in the paper of short actions for hearing on further consideration before the Master of the Rolls [*Or*, Vice-Chancellor ——], on the —— day of ——, 187—. Dated [*&c.: Conclude as in* No. 774 *ante*].

(*d*) See Dan. Pr. 1234; Cons. Ord. XXI. 10. The notice must be served at least six days before the day for which the action is marked for further consideration; *Ibid.* As to the parties to be served with the notice, see Dan Pr. 1235. As to the mode of service, see R. S. C. Ord. XIX. 6, 29. For forms of affidavit of service of the notice, and of having been served therewith, see *ante* Nos. 741, 742. For form of notice to a purchaser, see *ante* No. 1161. As to the papers to be left with the Judge, see Dan. Pr. 1235. As to drawing up and enforcing orders on further consideration, see *ante* note (*a*) at p. 682.

(*f*) See Dan. Pr. 1234; Reg. Regul. 15 Mar. 1860, rule 10.

(*g*) See Dan. Pr. 1234. For forms of affidavit of service of the notice, and of having been served therewith, see *ante* Nos. 741, 742.

(*h*) See Dan. Pr. 1234; Reg. Regul. 15 Mar. 1860, rule 10.

1255.
Summons for further consideration of a cause originating in Chambers (*i*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*Or*, defendant A. B.; *or as may be*; *see ante* No. 968], that this cause, the further consideration whereof was adjourned by the order of the —— day of ——, 187—, may be further considered.

1256.
Consent to summons being issued, and made returnable, prematurely (*k*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]
We consent to a summons for the further consideration of this cause being issued and made returnable forthwith [*or as may be*]. Dated this —— day of ——, 187—.
G. H., solicitor for the defendant E. F.
L. & O., solicitors for the remaining defendants.

1257.
Note of adjournment into Court of the hearing on further consideration (*l*).

Master of the Rolls [*Or*, Vice-Chancellor ——], at Chambers.
[*Short title.*]
The further consideration of this matter and cause is adjourned into Court: to be set down in the cause book after the causes already set down for further consideration.
[*If for a special day, add:*] and to be put into the paper for further consideration on ——, the —— day of ——, 187—.
Dated this —— day of ——, 187—.
R. M., Chief Clerk.
N. B. Notice hereof is to be given to the solicitors for all parties in the cause.

(*i*) See Dan. Pr. 1234; Regul. 8 Aug. 1857, rule 18. This summons mus be served six clear days before the return; *Ibid.* As to the parties to be served with the summons, see Dan. Pr. 1235. For forms of affidavit o service of the summons, and of having been served therewith, see *ante*, Nos. 885, 886. For forms of order in like case, see Seton, ed. 4, p. 41, Nos. 2, 3. As to drawing up and enforcing orders on further consideration, see *ante* note (*a*) at p. 682.
(*k*) See Dan. Pr. 1234, note (*b*).
(*l*) *Ibid.*, 1234.

1258. Notice that cause so adjourned has been set down in the Registrars' book (*m*).

Formal parts: see ante No. 21.

Take notice that this cause has been set down for further consideration—*If so:* as a short cause—before his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], in the Registrars' book of causes standing for hearing.

1259. Brief on further consideration (*n*).

(1.) Contents.

(1) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

[*Full title, and reference to the record.*]

Brief on further consideration for the plaintiff [*Or*, defendant A. B.; *or as may be*].

——, 187— (*o*). By the judgment [*Or*, order] of this date, made on the trial of this action, it was adjudged [*Or*, ordered] that [*Set out, in the past tense, the whole of the judgment or order made at the former hearing, except the title and recital of the evidence: introducing each separate declaration or direction by a new line* (*p*)].

——, 187— (*o*). By the certificate of A. B., esquire, the Chief Clerk of the Master of the Rolls [*Or*, Vice-Chancellor ——], of this date, and approved by the said Judge on the —— day of ——, 187—, and filed on that day [*Or*, on the —— day of ——, 187—], he certified that, in pursuance of the said judgment [*Set out, in the past tense, the certificate* (*q*)*: introducing by a new line each separate finding; and placing in the margin the numbers of the directions answered* (*r*)].

Observations.

[*Set out such observations as may be deemed advisable.*]

[In

(*m*) See Dan. Pr. 1234. For forms of affidavit of service of the notice, and of having been served therewith, see *ante* Nos. 741, 742. As to the papers to be left for the Judge, see Dan. Pr. 1235.

(*n*) See Dan. Pr. 1236, note (*l*). The brief should be accompanied by the brief and other papers held by counsel at the former hearing; *Ibid.* As to consultation and refresher and other fees and costs, see *Ibid.*, 841, note (*z*).

(*o*) The dates of the documents briefed should be placed in the margin.

(*p*) Any intermediate orders to carry on proceedings, or otherwise, or certificates of the Chief Clerk, material to the further consideration, should here follow, each such order or certificate being introduced by a new line.

(*q*) The statements in the certificate of the evidence produced on the various accounts and inquiries are usually omitted in the brief in cases where nothing is likely to turn thereon at the hearing.

(*r*) No part of the schedules to the certificate, or of any account filed therewith, should be set out in the brief, unless the special circumstances of the case may render the same necessary; Dan. Pr. 1236, note (*l*). If any affidavits, material to the further consideration, have been filed since the certificate, they should be briefed and follow the certificate.

(2.) Indorsements.

(2) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Brown
v.
Dobinson,
187—. B. No.

Brief
on the hearing on further consideration.

For [*Continue as in* No. 772 *ante*].

CHAPTER XVIII.

EXECUTION (*a*).

(*a*) A judgment or order for the recovery or payment of money may be enforced (1) by a writ of *fieri facias;* (2) by a writ of *elegit;* (3) by the attachment of debts due to the judgment debtor; (4) by an order charging with the amount of the judgment debt any government stock, funds, or annuities, or any stock or shares of or in any public company in England, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, or in which the judgment debtor has any interest whether in possession, remainder, or reversion, and whether vested or contingent; (5) by a writ of sequestration; (6) by committal to prison for a term not exceeding six weeks; R. S. C. Ord. XLII. 1. A judgment or order for the recovery or for the delivery of the possession of land may be enforced by writ of possession; R. S. C. Ord. XLII. 3. A judgment for the recovery of property other than money or land may be enforced (1) by writ of delivery; (2) by writ of sequestration; (3) by writ of attachment; R. S. C. Ord. XLII. 4. A judgment or order for the payment of money into Court, or requiring a person to do any act other than the payment of money, or to abstain from doing anything, may be enforced (1) by writ of sequestration; (2) by writ of attachment; (3) by committal to prison; R. S. C. Ord. XLII. 2, 5; Ord. XLVII. Every order of the Court or a Judge may be enforced in the same manner as a judgment to the same effect; R. S. C. Ord. XLII. 20. On a judgment for the recovery or payment of money, writs of *fi. fa.* and *elegit* may be issued immediately that the judgment is entered; R. S. C. Ord. XLII. 15; and without any service of the judgment; *ex parte Munster*, L. R. 5 Ch. 323; but if the judgment be for payment within a period therein mentioned, execution may not issue until after the expiration of such period; R. S. C. Ord. XLII. 15; and on an order for payment of costs made upon an interpleader proceeding under 1 & 2 Wm. IV. c. 58, execution may not issue until fifteen days after notice of the amount of the costs given to the party ordered to pay the same; 1 & 2 Wm. IV. c. 58, s. 7; R. S. C. Ord. I. 2. Upon a judgment that a party do recover possession of land, a writ of possession may be issued immediately that judgment is entered and without any service of the judgment; R. S. C. Ord. XLVIII. 1. So upon a judgment for the recovery of property other than land or money, a writ of delivery may be issued immediately that judgment is entered and without any service of the judgment; R. S. C. Ord. XLIX. But upon a judgment requiring a person to pay money into Court, or to do any other act (other than the payment of money), or to abstain from doing any act, execution cannot be issued until after the judgment has been served and default in obedience thereto; Cons. Ord. XXIII. 10; *Ibid.*, XXIX. 1; *Ibid.*, XXX. 4; Gen. Ord. Jan. 1870, rules 1, 6; R. S. C. Ord. XLVII.; R. S. C. Ord. XLVIII. 2. Even on a judgment for the payment of money, a writ of

sequestration cannot issue until after service of the judgment and default in payment, according to the exigency thereof; Gen. Ord. Jan. 1870, rule 3. As to service of the judgment, see *post* Nos. 1260—1266. The Court or a Judge has power to stay execution; R. S. C. Ord. XLII. 15, 22; for forms of application to stay execution, see *post* Nos. 1273—1276. Execution may issue at any time within six years from the entry of judgment, provided that no change has taken place by death or otherwise in the parties entitled or liable to execution; after the expiration of such six years, or where such change has taken place, execution may not issue without leave of the Court or a Judge; R. S. C. Ord. XLII. 18, 19; for form of application for leave to issue execution, see *post* No. 1268. Where a judgment is to the effect that a party is entitled to relief subject to or upon the fulfilment of any condition or contingency, execution may not be issued upon such judgment without the leave of the Court or a Judge; R. S. C. Ord. XLII. 7. A writ of attachment may not be issued without leave; R. S. C. Ord. XLIV. 2. Upon issuing execution the judgment, or an office copy thereof, must be produced to the officer, and a *præcipe* filed with him; R. S. C. Ord. XLII. 9, 10. Where the action is proceeding in a district registry, all writs of execution must issue therefrom, unless otherwise directed by the Court or a Judge; R. S. C. Ord. XXXV. 3. On issuing a writ of execution a fee is payable of 5*s.* on the lower scale and 10*s.* on the higher scale, by means of a stamp impressed upon the *præcipe*; Ord. as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522. A writ of execution if unexecuted, remains in force for a year only from its issue; but it may before its expiration be renewed by leave of the Court or a Judge; R. S. C. Ord. XLII. 16; as to the renewal of writs of execution, see *post* Nos. 1399—1401, and notes thereto. Any person not being a party in an action who obtains any order, or in whose favour any order is made, may enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, is liable to the same process for enforcing obedience to such judgment or order, as if he were a party to the action; R. S. C. Ord. XLII. rule 21. Where judgment is against partners in the name of the firm, execution may issue in manner following: (*a.*) against any property of the partners as such; (*b.*) against any person who has admitted on the pleadings that he is, or has been adjudged to be, a partner; and (*c.*) against any person who has been served, as a partner, with the writ of summons, and has failed to appear. If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or, if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined; *Ibid.*, rule 8. By the statute 7 Geo. IV. c. 46, s. 13, it is provided that upon any judgment obtained against any public officer of any corporation or copartnership carrying on business under that act, execution may be issued against any member or members thereof for the time being; and that, if such execution prove ineffectual, execution may by leave of the Court be issued against any person or persons who was or were a member or members of the corporation or co-partnership at the time when the engagement upon which such judgment is obtained was entered into, or became a member before such engagement was executed, or was a member at the time

of judgment obtained ; but such leave is not to be granted after the expiration of three years next after any such person or persons shall have ceased to be a member or members of such corporation or co-partnership. The application for leave must be made by motion in open Court, upon notice to the person sought to be charged. By the statute 7 Wm. IV. & 1 Vict. c. 73, s. 24, a judgment or order obtained against the public officer of a company constituted under that act, has the same effect against the persons, property, and effects of the individual existing or former members of such company, as if such judgment or order had been obtained in a proceeding to which all such members had been parties, and execution may be issued accordingly ; but when the extent per share of the liability of individual members is limited, no execution can be issued against an individual member for a greater sum than the residue of the amount for which he is liable in respect of the share or shares held by him. By the statute 8 & 9 Vict. c. 16, s. 36, it is enacted that if execution has been issued against the property and effects of a company incorporated under that act, and there cannot be found sufficient whereon to levy such execution, execution may, by leave of the Court, be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up ; and for the purpose of ascertaining the names of the shareholders and the amount of capital remaining to be paid upon their respective shares, the person entitled to the execution may, at all reasonable times, inspect, without a fee, the register of shareholders kept by the company. The application for leave to issue execution is to be made by motion in open Court, upon notice to the person sought to be charged. No similar provisions are to be found in the Joint Stock Companies Acts of 1856 and 1862 ; 19 & 20 Vict. c. 47, and 25 & 26 Vict. c. 89. At law it was held under the old practice, that, upon a judgment obtained against a company, or the public officer of a company, execution could not issue against a shareholder therein without a *scire facias* being issued ; *Ransford* v. *Bosanquet*, 2 Q. B. 972 ; S. C. 12 A. & E. 812 ; *Hitchin* v. *Kilkenny Railway Co.*, 10 C. B. 160 ; *Devereux* v. *Kilkenny Railway Co.*, 5 Exch. 834 ; *Wingfield* v. *Barton*, 2 Dowl. N. S. 355 ; *Clowes* v. *Brettell*, 2 Dowl. N. S. 529 ; but in equity the practice was, upon an application under 8 & 9 Vict. c. 16, s. 36, for leave to issue execution, to order execution to issue unless cause were shown to the contrary by a certain day ; *Healey* v. *Chichester and Midhurst Railway Co.*, L. R. 9 Eq. 148. It is apprehended that under the new practice execution may be issued against a shareholder or member of a company constituted under 7 Geo. IV. c. 46, 7 Wm. IV. & 1 Vict. c. 43, or 8 & 9 Vict. c. 16, upon a judgment recovered against the company or a public officer thereof, without any *scire facias*, or writ of summons, which seems to have taken the place of a *scire facias*, the leave of the Court being obtained in those cases in which it is necessary that leave should be obtained ; see R. S. C. Ord. XLII. 21 ; and compare the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 11. For forms of application for leave to issue execution, see *post* Nos. 1269—1272. For form of writ of execution against shareholders, see *post* No. 1288.

Section I.—Service of the Judgment (*b*).

1260. Notice of motion or summons to fix a time for obeying the judgment where no time limited by the judgment (*c*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the plaintiff [*or as may be*] that the defendant C.D. [*or as may be*] may be ordered on or before the —— day of ——, 187—, or subsequently within —— days after service of the order to be made hereon to

[*Describe the act directed by the judgment or order; as thus:*] pay into Court to the credit of this action the sum of £1000, pursuant to the judgment [*Or*, order] dated the —— day of ——, 187—. And that the costs of this application may be costs in the action.

1261. The like to enlarge the time fixed (*d*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the plaintiff [*or as may be*] that the time limited by the judgment [*Or*, order] dated the —— day of ——, 187—, for the defendant C. D. [*or as may be*] to [*Describe the act to be done; see* No. 1260 *ante*] may be enlarged to the —— day of ——, 187—, or —— days after service of the order to be made hereon; and that the costs of this application may be costs in the action.

1262. Memorandum to be indorsed on copy judgment or order for service (*e*).

If you the within named C. D. neglect to obey this judgment [*Or*, order] by the time therein limited, you will be liable to have your property sequestered for the purpose of compelling you to obey the same judgment [*Or*, order]. And you may also be liable to be arrested and committed to prison.

(*b*) Writs of *fi. fa.* and *elegit* may be issued upon a judgment or order for the payment or recovery of money without such judgment being served; R. S. C. Ord. XLII. 15; *Re Munster*, L. R. 5 Ch. 323; so, on a judgment for the recovery of the possession of land, a writ of possession may be issued without the judgment being served; R. S. C. Ord. XLVIII. 1; so, on a judgment for the recovery of property other than money or land, a writ of delivery may be issued without the judgment being served; R. S. C. Ord. XLIX.; but in other cases process cannot issue until after the judgment has been served; see note (*a*), *supra*, at p. 687. As to the mode of service, see note (*g*) to No. 1264 *post*.

(*c*) Every judgment or order requiring a person to do an act must state the time or the time after service of the judgment or order within which the act is to be done; Cons. Ord. XXIII. 10; Ord. January, 1870, rule 1; and see R. S. C. Ord. XLVII. If the judgment or order omits to fix a time, the Court will upon motion, of which notice must be given, make a supplemental order fixing the time; Dan. Pr. 904. Where the defective order was obtained at Chambers, the application is by summons; *Ibid.*, note (*p*). Such supplemental order must be indorsed and served in like manner as an original order; *Ibid.*

(*d*) If the judgment or order names a specific day for doing the act, it must be served before the day named; if not so served, an application must be made by motion or summons for an order enlarging the time; Dan. Pr. 904. Such further order must be indorsed and served like an original order; *Ibid.*

(*e*) Upon the copy of the judgment or order which is served upon the person

1263. The like where the service is on a Peer or M.P., or on a corporation aggregate (*f*).

[*Same as* No. 1262 *ante, omitting the words* "and you may also be liable to be arrested and committed to prison."]

1264. Motion paper or summons for substituted service of judgment or order (*g*).

Formal parts: see post No. 1570, *or ante* No. 881.

on the part of the plaintiff [*or as may be*] that service of the judgment [*Or*, order] dated the —— day of ——, 187—, together with a copy of the order to be made hereon upon [*Describe the proposed substitute as thus:*]

X. Y. of [*residence and addition*]; *Or*,

X. Y. and T. Z., members of the firm of Y. & Z. of [*place of business and addition*] or upon either of them,

may be deemed good service of the said judgment [*Or*, order] on the defendant C. D.

1265. Affidavit in support (*h*).

Formal parts: see ante No. 693.

1. [*Show what efforts have been made to effect personal service of the judgment or order, and why it cannot be effected.*]

2. [*Show upon what person or in what mode substituted service is proposed to be made, and the special grounds for selecting such person, &c.*]

3. [*Show means of knowledge.*]

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required to obey the same, there must be indorsed a memorandum in these words, or to this effect; Cons. Ord. XXIII. 10; Ord. January, 1870, rule 1.

(*f*) See Dan. Pr. 904, 905.

(*g*) The service of the judgment or order must (unless otherwise authorised by the Court) be personal; and is effected by delivering to, and leaving with the person required to do the act a true copy of the judgment or order properly indorsed, at the same time producing and showing to the person served the original order as passed and entered, or an office copy thereof sealed with the seal of the Report Office, and signed by one of the Clerks of Records and Writs; Dan. Pr. 905. For form of affidavit of service, see *post* No. 1266. In some cases the Court will allow service to be substituted; see Dan. Pr. 905. The order for substituted service is obtained on an *ex parte* application, by summons in the case of proceedings in Chambers, in other cases by motion; Dan. Pr. 906. The application must be supported by an affidavit; *Ibid.*; for form, see *post* No. 1265. Where an order for substituted service is made, the service must be in accordance with the terms of such order, and a copy of the order must be served; Dan. Pr. 906.

(*h*) See Dan. R. 906.

1266.
Affidavit of service of judgment or order (*hh*).

Formal parts: see ante No. 693.

1. On the —— day of ——, 187—, I served the defendant C. D. [*Or*, C. D., the person named in the order dated the —— day of ——, 187—, hereinafter mentioned; *or as may be*] with the judgment pronounced [*Or*, order made] in this action on the —— day of ——, 187—, whereby it was adjudged and ordered [*Or*, whereby it was ordered] that [*Here recite the declaratory and directory parts of the judgment or order*] by delivering a true copy of the said judgment [*Or*, order] to, and leaving the same with

[*If service personal, say:*] the said defendant C. D. at ——, in the county of ——,

[*In case of substituted service, say:*] X. Y. the person [*Or*, one of the persons] named in the order, dated the —— day of ——, 187—, hereinafter mentioned, at ——, in the county of ——,

and I at the same time produced and showed to the said C. D. [*Or*, the said X. Y.] the said original judgment [*Or*, order] duly passed and entered.

Or, an office copy of the said judgment [*Or*, order] duly sealed with the seal of the Report Office of this Honourable Court, and signed by E. G., Esquire, one of the Clerks of Records and Writs of the Chancery Division of this Honourable Court.

2. The copy of the said judgment [*Or*, order] so served as aforesaid, had endorsed thereon at the time of the aforesaid service thereof, a memorandum in the words following, that is to say: [*Set out a copy of the memorandum.*]

[*In case of substituted service, add:*] 3. At the time of the aforesaid service of the said copy of the said judgment [*Or*, order], I also served the said X. Y. with an order made in this action dated the —— day of ——, 187—, whereby it was ordered that [*Recite the order*] by delivering a true copy of the said order to and leaving the same with the said X. Y., and I at the same time produced and showed to him such original order, duly passed and entered [*Or*, an office copy of the said order, *&c., as in paragraph* 1, *supra.*]

1267.
Affidavit of neglect or refusal to do an act according to the exigency of a judgment or order (*j*).

Formal parts: see ante No. 693.

1. The above named defendant, C. D. [*Or*, C. D. in the judgment [*Or*, order] in this action dated the —— day of ——, 187—, named] has not, nor has any person on his behalf [*Describe the default*].

2. [*Show means of knowledge.*]

(*hh*) As to the mode of service of a judgment or order, see *ante*, note (*g*) to No. 1264.

(*j*) In the case of a judgment or order directing the payment of money into

SECTION II.—APPLICATION FOR LEAVE TO ISSUE EXECUTION (*k*).

1268. Motion paper, notice of motion, or summons for leave to issue execution (*k*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title of action or matter and reference to the record.*]
[*If the application is made by ex parte motion, say :*]
To move on behalf of
[*If the application is made by motion on notice, say :*]
Take notice [*&c.; Continue as in* No. 1571 *post to* on the part of]
[*If the application is made by summons, say :*] Let all parties [*&c.; Continue as in* No. 881 *ante to* on the part of]
[*In any case continue thus :*] the above-named plaintiff
[*Or,* of P. Q. and R. S., the legal personal representatives of the plaintiff A. B., since deceased ; *or as may be ;*
that he [*Or,* they] may be at liberty to issue execution against (*l*) the defendant C. D.

Court, the default is proved by the production of the Paymaster-General's certificate ; Dan. Pr. 908 ; and see *post* Nos. 1968, 1969, and notes thereto.

(*k*) The leave of the Court or a Judge to issue execution is necessary in the following cases : (1) Where six years have elapsed since the entry of the judgment or order ; R. S. C. Ord. XLII. 18, 19 ; (2) Where any change has taken place by death or otherwise in the parties entitled or liable to execution ; R. S. C. Ord. XLII. 18, 19 ; (3) Where a judgment has been obtained against partners in the name of their firm, and the party who has obtained such judgment claims to be entitled to issue execution against a person, as being a member of the firm, who has neither admitted on the pleadings that he is a partner, nor has been adjudged to be a partner, nor has been served as a partner with the writ of summons, and has failed to appear thereto ; R. S. C. Ord. XLII. 8 ; (4) Where a judgment is to the effect that a party is entitled to relief subject to or upon the fulfilment of a condition or contingency, and the condition or contingency has been fulfilled ; R. S. C. Ord. XLII. 7 ; (5) Where, upon a judgment recovered against a company incorporated under 8 & 9 Vict. c. 16, it is sought to issue execution against a shareholder of the company ; 8 & 9 Vict. c. 16, s. 36 ; *supra* note (*a*) at p. 689. (6) Where, upon a judgment recovered against the public officer of a corporation or co-partnership trading under 7 Geo. IV. c. 46, it is sought to issue execution against a person not a member of the corporation or co-partnership at the time of issuing execution ; 7 Geo. IV. c. 46, s. 13 ; *supra* note (*a*) at p. 688. If the right to issue execution or the liability to execution is disputed, the Court or Judge may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried ; R. S. C. Ord. XLII. 7, 8, 19. Where a sole plaintiff dies after judgment recovered in his favour, but before execution, leave to issue execution may be obtained *ex parte ; Mercer* v. *Lawrence,* 26 W. R. 506. As to the form of the order, see *Ibid.* The order will not extend to the costs of the application ; *Ibid.*

(*l*) The term "issuing execution against a party," means the issuing of such process against his person or property as, under Ord. XLII., is applicable to the case ; R. S. C. Ord. XLII. 6.

[*Or*, against X. Y. and T. Z. as legal personal representatives of the defendant C. D., since deceased; *Or*, against X. Y. as being a member of the above named firm of D. & Company; *or as may be* upon the judgment [*Or*, order] entered in this action on the —— day of ——, 187—.

1269.

Notice of motion for leave to issue execution under 7 Geo. 4, c. 46, s. 13 (*m*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . . Plaintiff,
and
C. D., a registered public officer of the R. Banking Company. . . Defendant.

Whereas by a judgment [*Or*, order] of the High Court of Justice made in the above action, and dated the —— day of ——, 187—, it was adjudged [*Or*, ordered] that the above named plaintiff A. B. should recover against the above named defendant C. D., as the registered public officer of the R. Banking Company, being a corporation or co-partnership duly constituted and carrying on the business of banking under the statute 7 Geo. IV. c. 46, the sums of £—— and £—— [*State the amounts, as in the judgment or order*]. And whereas execution upon the said judgment has been issued against the members for the time being of the said R. Banking Company, but such execution has been ineffectual for obtaining payment and satisfaction of the amount of the said judgment. And whereas you were a member of the said R. Banking Company at the time when the contract upon which the said judgment was obtained, was entered into [*Or*, after the time at which the contract upon which the said judgment was obtained, was entered into, and before the time at which the said contract was executed; *Or*, at the time when the said judgment was obtained]. Now take notice, that this Honourable Court will be moved before his lordship the Master of the Rolls [*or as may be*], on —— day, the —— day of ——, 187—, or so soon thereafter as counsel can be heard, by counsel on behalf of the above named plaintiff, for liberty to issue execution against you upon the said judgment.

Dated —— day of ——, 187—.

X. Y., of [*address*],
Plaintiff's solicitor.

To E. F., of, *&c.*

(*m*) See 7 Geo. IV. c. 46, s. 13; *supra*, note (*a*), at p. 688. The notice should be served a reasonable time before the day named for making the motion. For form of affidavit in support, see *post* No. 1270.

1270.
Affidavit in support.

Formal parts: see ante No. 693.

1. [*State the recovery of judgment against the registered public officer upon a contract or engagement entered into with the banking company.*]

2. [*Show that execution has been issued upon the judgment, and that all reasonable efforts have been made to obtain satisfaction from the present members of the company, and that, notwithstanding, the judgment remains unsatisfied in the whole or in part.*]

3. [*Show that the company was constituted under the Act, and that the person against whom the application is made, was a member of the company at one of the times mentioned in the Act.*]

1271
Notice of motion for leave to issue execution under 8 & 9 Vict. c. 16, s. 36 (*n*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . . Plaintiff,
and
The R. Company . . Defendants.

Whereas by a judgment [*Or*, order] of the High Court of Justice made in this action, and dated the —— day of ——, 187—, it was adjudged [*Or*, ordered] that the above-named plaintiff A. B. should recover against the above-named defendants, the R. Company, being a company duly incorporated and to which the provisions of the statute 8 & 9 Vict. c. 16 apply, the sums of £—— and £—— [*State the amounts, as in the judgment or order*]. And whereas execution has been issued against the property and effects of the said R. Company, but there cannot be found sufficient whereon to levy such execution. And whereas you are a holder of —— shares in the capital of the said company, whereupon the sum of £—— remains to be paid to the said company. Now take notice, that this honourable Court will be moved before his lordship the Master of the Rolls [*or as may be*], on —— day, the —— day of ——, 187—, or so soon thereafter as counsel can be heard, by counsel on behalf of the above-named plaintiff, for liberty to issue execution against you upon the said judgment to the extent of the said sum of £——, being the amount of capital so as aforesaid remaining to be paid upon the said shares held by you as aforesaid.

Dated —— day of ——, 187—.

Yours, &c.
X. Y., of [*address*],
Solicitor for the plaintiff.

To E. F., of, &c.

(*n*) See 8 & 9 Vict. c. 16, s. 36; *supra*, note (*a*), at p. 689. The notice should be served a reasonable time before the day named for making the motion. For form of affidavit in support, see *post* No. 1272.

1272.
Affidavit in support.

Formal parts: see ante No. 693.

1. [*State the recovery of judgment against the company.*]

2. [*Show that execution has been issued against the company, and that all reasonable efforts have been made to obtain satisfaction of the judgment, and that, notwithstanding, the judgment remains unsatisfied in the whole or in part.*]

3. [*Show that the company is within the provisions of* 8 & 9 *Vict. c.* 16, *that the person against whom the application is made holds shares in the company, the number of such shares, and the amount of capital remaining unpaid thereon.*]

Section III.—Application to Stay Execution.

1273.
Notice of motion or summons to stay execution (*m*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the defendant C. D. [*or as may be*] that execution upon the judgment [*Or*, order] in this action dated the —— day of ——, 187—, may be stayed until [*State when*].

1274.
Notice of motion or summons to enlarge time for obeying any judgment or order, and to stay execution in the meantime (*n*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the defendant C. D. [*or as may be*], that the time limited by the judgment [*Or*, order] dated the —— day of ——, 187—, for the applicant to [*Describe the act directed by the judgment or order to be done; see* No. 1260 *ante*] may be enlarged to the —— day of ——, 187—, and that in the meantime execution upon the said judgment [*Or*, order] may be stayed.

1275.
Notice of motion to stay execution pending appeal (*o*).

Formal parts: see post No. 1571.

on the part of the defendant C. D. [*or as may be*], that execution and all other proceedings upon or under the judgment [*Or*, order] in this action dated the —— day of ——, 187—, may be stayed until after the hearing of the said defendant's motion by way of appeal from the said judgment [*Or*, order], of which notice was served on the —— day of ——, 187—.

(*m*) The Court or a Judge at the time of giving judgment, or the Court or a Judge afterwards, may stay execution; R. S. C. Ord. XLII. 15.

(*n*) See Dan. Pr. 906; see also R. S. C. Ord. XLII. 15; Ord. LVII. 6.

(*o*) An appeal does not operate as a stay of execution or of proceedings under the judgment or order appealed from, except so far as the Court appealed from,

Formal parts: see post No. 1571.
on the part of the defendant C. D. [*or as may be*], that execution upon the judgment in this action dated the —— day of ——, 187—, and all other proceedings in this action may be stayed.

1276. Notice of motion to stay execution and all other proceedings in the action (*p*).

SECTION IV.—THE WRIT OF FIERI FACIAS, AND WRITS IN AID THEREOF.

(1.) *Issuing the Fi. Fa.*

1277. *Præcipe* for writ (*a*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Seal a writ of *fieri facias*, directed to the sheriff of ——, to levy against C. D. [*or as may be*] the sum of £——, and interest thereon at the rate of £—— per centum per annum, from the —— day of ——, and £—— costs.

Judgment [*Or*, order] dated —— day of ——.
Taxing Master's certificate dated —— day of ——.

[*Name and address of solicitor or party issuing writ, as in* No. 92 *ante.*]

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or a Judge thereof, or the Court of Appeal, may order; R. S. C. Ord. LVIII. 16. An application to stay execution must be made in the first instance to the Court appealed from; *Ibid.*, 17; *Goddard* v. *Thompson*, 26 W. R. 362. So, on an appeal to the House of Lords, the application must be made first to the Court below; Dan. Pr. 1339, note (*t*). The application must be upon notice; *Rep. of Peru* v. *Weguelin*, 24 W. R. 297. As to staying execution pending an appeal, see *Kelly* v. *Hutton*, 15 W. R. 916; *Merry* v. *Nickalls*, L. R. 8 Ch. 205; *Cooper* v. *Cooper*, 2 Ch. D. 492; *Morgan* v. *Elford*, 4 Ch. D. 388; Dan. Pr. 1335—1339. The applicant must in any event pay the costs of the application; *Merry* v. *Nickalls, ubi supra; Cooper* v. *Cooper, ubi supra.*

(*p*) The proceeding by *audita querela* is abolished; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just; R. S. C. Ord. XLII. 22.

(*a*) No writ of execution can be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* must contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and must be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person; R. S. C. Ord. XLII. 10, as altered by R. S. C., June, 1876, rule 17. For form of *præcipe* see R. S. C. App. (E), form 1.

1278.
Writ of *fieri facias* for money and costs (*b*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of —— (*c*) greeting.

We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of £—— (*d*), which said sum of money was lately before us in our High Court of Justice in a certain action wherein A. B. is plaintiff and C. D. and others are defendants [*Or,* in a certain matter there depending intituled "In the matter of E. F.;" *or as the case may be*] by a judgment [*Or,* order] of our said Court, bearing date the —— day of ——, adjudged [*Or,* ordered] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*Or,* order] mentioned, and which costs have been taxed and allowed by one of the Taxing Masters of our said Court at the sum of £——, as appears by the certificate of the said Taxing Master, dated the —— day of ——. And that of the goods and chattels of the said C. D., in your bailiwick, you further cause to

(*b*) A writ of *fieri facias* may issue upon any judgment for the recovery by or payment to any person of money; R. S. C. Ord. XLII. 1, 15; Ord. XLIII. The writ may, except in the cases mentioned in note (*a*) at p. 678 *ante*, issue immediately that the judgment is entered, unless execution is stayed by the Court or a Judge; R. S. C. Ord. XLII. 15; and no service of the judgment is necessary before issuing the *fi. fa.*; *Ibid.*; *Ex parte Munster*, L. R. 5 Ch. 323. As to the cases in which it is necessary to obtain the leave of the Court or a Judge to issue the writ, see *ante*, note (*k*), at p. 693. As to the writ of *fi. fa.* see Chitty's Arch. 644—682. For form of writ see R. S. C. App. (F), No. 1. The writ must be so moulded as to follow the substance of the judgment or order, and if it departs from the judgment or order, it must show upon its face a valid reason for doing so; see the note to form No. 1 in App. (F) to the Rules of the Supreme Court; and Chitty's Arch. 604—607. On issuing the writ the judgment must be produced; R. S. C. Ord. XLII. 9. As to the fee payable on issuing the writ, see *ante* p. 688. As to the renewal of the writ, see *post* Nos. 1399—1401 and notes thereto. As to the execution of the writ, see Chitty's Arch. pp. 618—625, and 645—675. As to the return of the writ, see *Ibid.*, 625—635; and 675—678; and *post* Nos. 1294—1299 and notes thereto.

(*c*) As to the direction of the writ, see note (*f*) to No. 361, and No. 364 *ante*.

(*d*) Here insert the full amount of the debt or damages for which judgment is recovered, even though the judgment debtor may have satisfied some part thereof; for the writ must strictly follow the judgment or order; see note (*b*), *supra*.

be made the said sum of £—— (*e*), and also interest (*f*) at the rate of £—— per centum per annum on the said sum of £—— (*g*), from the —— day of ——, 187— (*h*), and on the said sum of £—— (*j*), from the —— day of ——, 187— (*k*). And that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said judgment [*Or*, order]. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, 187— (*l*).

1279. Indorsement of name and address of party issuing writ, where writ issued by solicitor (*m*).

This writ was issued by X. Y., of [*place of abode or office of business*], agent for T. Z., of [*place of abode*], solicitor for the within-named plaintiff [*or as may be*].

1280. The like, where writ issued by the party in person (*m*).

This writ was issued by A. B., the within-named plaintiff [*or as may be*], in person, who resides at No. ——, in Blank Street, in the parish of ——, in the county of —— [*State city, town, or parish, and also the name of the hamlet, street, and number of the house of the party's residence, if any such there be*].

(*e*) The amount of the taxed costs.

(*f*) The right to this interest, where it has not been expressly agreed on between the parties, is given by the stat. 1 & 2 Vict. c. 110, s. 17.

(*g*) The amount of the debt or damages.

(*h*) The date of the judgment or order.

(*j*) The amount of the taxed costs.

(*k*) The date of the taxing master's certificate.

(*l*) The writ must bear date of the day on which it is issued, and must be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor be vacant, in the name of the Lord Chief Justice of England; R. S. C. Ord. II. 8; Ord. XLII. 12.

(*m*) Every writ of execution must be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ sues out the same as agent for another solicitor, the name and place of abode of such other solicitor must also be indorsed upon the writ; and in case no solicitor be employed to issue the writ, then it must be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be; R. S. C. Ord. XLII. 11.

1281.
Indorsement of amount to be levied (*n*).

Levy £—— and interest thereon [*Or*, on £——] at £4 (*o*) per cent. from the —— day of ——, 187—, and £—— for this writ and warrant thereon, besides sheriffs' poundage, officers' fees, and all other lawful expenses of execution.

1282.
Writ of *fieri facias* for money, interest, and costs (*p*).

[*Proceed as in* No. 1278 *ante, to* cause to be made; *and continue as follows:*]
the sum of ——, and also interest thereon at the rate of £4 per centum per annum, from the —— day of —— (*q*): which said sum of money and interest were lately before us, in our High Court of Justice, in a certain action wherein A. B. is plaintiff and C. D. and others are defendants [*Or*, in a certain matter there depending intituled "In the matter of E. F.;" *or as the case may be*], by a judgment [*Or*, order] of our said Court, bearing date the —— day of ——, adjudged [*Or*, ordered] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*Or*, order] mentioned, and which costs have been taxed and allowed by one of the Taxing Masters of our said Court, at the sum of £——, as appears by the certificate of the said Taxing Master, dated the —— day of ——. And that of the goods and chattels of the said C. D., in your bailiwick, you further cause to be made the said sum of £—— (*r*), together with interest thereon at the rate aforesaid, from the —— day of —— (*s*). And that

(*n*) Every writ of execution for the recovery of money must be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed; R. S. C. Ord. XLII. 14. The indorsement must be for the amount actually due, although the full amount of debt or damages be stated in the body of the writ. In addition to the amount recovered, the party entitled to execution may levy the poundage, fees, and expenses of execution; R. S. C. Ord. XLII. 13. As to the sheriff's poundage, and the other expenses of execution, see Chitty's Arch. 635, *seq.*, and App.; *Bissick* v. *Bath Colliery Co. Limited*, 2 Ex. D. 459; 26 W. R. 215; affirmed on appeal, 26 W. R. 365; W. N. (1878) 56; *Mortimore* v. *Cragg*, 26 W. R. 363 (C. A.)

(*o*) As to the rate of interest, see R. S. C. Ord. XLII.; note (*n*), *supra*.

(*p*) See note (*b*) to No. 1278 *ante*; and generally see the notes to that form. For the form, see R. S. C. App. (F), No. 1.

(*q*) Insert the date from which interest is directed by the order to run, or the date on which the money is directed to be paid.

(*r*) Amount of taxed costs.

(*s*) Date of certificate of taxation.

you have that money and interest before us in our said Court, immediately after the execution hereof, to be paid [*Conclude as in* No. 1278 *ante*].

1283. Indorsement of name and address of party issuing writ (*t*).

[*Same as* No. 1279 *or* No. 1280 *ante*].

1284. Indorsement of amount to be levied (*u*).

[*Same as* No. 1281 *ante.*]

1285. Writ of *fieri facias* after a change of parties (*v*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. [*since deceased*] . . Plaintiff,
and
C. D. [*since deceased*] . . Defendant

Victoria [*&c.: as in* No. 1278 *ante*].

To the sheriff of —— (*w*) greeting.

Whereas lately in our High Court of Justice, in a certain action there depending wherein A. B., since deceased, is plaintiff, and C. D., since deceased, is defendant, by a judgment [*Or*, order] of our said Court made in the said action, and bearing date the —— day of ——, 187—, it was adjudged [*Or*, ordered] that C. D. should pay unto A. B. the sum of £——, together with certain costs as in the said judgment [*Or*, order] mentioned, and which costs have been since taxed and allowed by R. B., esquire, one of the Taxing Masters of the said Court, at the sum of £——, as appears by the certificate of the said Taxing Master dated the —— day of ——, 187—. And whereas the said A. B. died on the —— day of ——, 187—, and L. M. and N. O. have been duly constituted and now are the legal personal representatives of the said A. B. And whereas the said C. D. died on the —— day of ——, 187—, and P. Q. and R. S. have been duly constituted and now are the legal personal representatives of the said C. D. There-

(*t*) See note (*m*) to No. 1279 *ante.*

(*u*) See note (*n*) to No. 1281 *ante.*

(*v*) See No. 1278 *ante*, and the notes thereto. The writ must state upon the face of it the change which has taken place, so as to show why it does not follow the judgment; see Chitty, Forms, 318, note (*a*). The writ can not be issued without leave of the Court or a Judge; R. C. S. Ord. XLII. 19; for form of application for leave, see *ante* No. 1268.

(*w*) As to the direction of the writ, see note (*f*) to No. 361, and No. 364 *ante.*

fore we command you that of the goods and chattels in your bailiwick which were of the said C. D. at the time of his death in the hands of the said P. Q. and R. S., his legal personal representatives, to be administered, you cause to be made the said two several sums of £—— (*x*) and £—— (*y*), together with interest on the said sum of £—— (*x*) at the rate of £4 per cent. per annum, from the —— day of ——, 187— (*z*), and on the said sum of £—— (*y*) at the rate of £4 per cent. per annum, from the —— day of ——, 187— (*a*). And that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said L. M. and N. O., as such legal personal representatives as aforesaid, in pursuance of the said judgment [*Or*, order]. And [*Conclude as in* No. 1278 *ante*].

1286. Indorsement of name and address of party issuing writ (*b*).

[*Same as* No. 1279 *or* No. 1280 *ante*.]

1287. Indorsement of amount to be levied (*c*).

[*Same as* No. 1281 *ante*.]

1288. Writ of *fi. fa.* against member of a banking company under 7 Geo. 4, c. 46 (*d*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . . Plaintiff,
and
C. D., one of the registered public officers of the R. Banking Company . . Defendant.

Victoria [*&c., as in* No. 1278 *ante*].

(*x*) Amount of debt or damages.
(*y*) Amount of taxed costs.
(*z*) Date of judgment or order.
(*a*) Date of taxing master's certificate.
(*b*) See note (*m*) to No. 1279 *ante*.
(*c*) See note (*n*) to No. 1281 *ante*.
(*d*) See 7 Geo. IV. c. 46, s. 13; *supra*, note (*a*), at p. 688. From this form other forms of writs may easily be framed, as may also forms of writ under 7 Wm. IV. & 1 Vict. c. 73, s. 24; *supra*, note (*a*), at p. 689; and under 8 & 9 Vict. c. 16, s. 36; *supra*, note (*a*), at p. 689. For forms of application for leave to issue execution in such cases, see *ante* Nos. 1269 to 1272.

To the Sheriff of —— (*e*) greeting :

Whereas lately in our High Court of Justice, in a certain action there depending wherein A. B. is plaintiff and C. D., one of the registered public officers of certain persons united in co-partnership under the name and style of the R. Company for the carrying on, and carrying on, the trade and business of bankers in England under the provisions of the statutes in that behalf for the better regulating co-partnerships of bankers in England, by a judgment [*Or*, order] of our said Court made in the said action, and bearing date the —— day of ——, 187—, it was adjudged [*Or*, ordered] that the said A. B. should recover against the said C. D., as and being such registered public officer as aforesaid, the sum of £——, together with certain costs as in the said judgment [*Or*, order] mentioned, and which costs have been since taxed and allowed by C. S., esquire, one of the Taxing Masters of the said Court, at the sum of £——, as appears by the certificate of the said Taxing Master dated the —— day of ——, 187—. And whereas by an order of our said Court dated the —— day of ——, 187—, it was ordered that [*Recite the order giving leave to issue the writ* (*f*)]. Therefore we command you that of the goods and chattels of the said E. F. in your bailiwick you cause to be made the said two several sums [*Continue as in* No. 1285 *ante, to the end, substituting* "A. B." *for* "L. M. and N. O., as such legal personal representatives as aforesaid"].

1289. Indorsement of name and address of party issuing writ (*g*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

1290. Indorsement of amount to be levied (*h*).

[*Same as* No. 1281 *ante.*]

(*e*) As to the direction of the writ, see *ante* note (*f*) to No. 361, and No. 364.

(*f*) See *ante* Nos. 1269, 1271.

(*g*) See note (*m*) to No. 1279 *ante.*

(*h*) See note (*n*) to No. 1281 *ante.* Where the liability of the person against whom the writ is issued is limited, care should be taken that the amount mentioned in this indorsement does not exceed the amount for which the party is liable; see 7 Wm. IV. & 1 Vict. c. 73, s. 24; 8 & 9 Vict. c. 16, s. 36.

(2.) *Execution of the Fieri Facias* (*d*).

1291. Warrant on a *fieri facias* (*e*).

—— to wit. X. Y., esquire, sheriff of the said county, to T. and Z., my bailiffs, greeting: By virtue of Her Majesty's writ to me directed and delivered, I command you and each of you jointly and severally that of the goods and chattels of C. D. in my bailiwick you cause to be made the sum of £—— [*Amount mentioned in the body of the writ*], which lately in the High Court of Justice, in a certain action wherein A. B. is plaintiff and C. D. and others are defendants, by a judgment [*Or*, order] of the said Court bearing date the —— day of ——, 187—, was adjudged [*Or*, ordered] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [*Or*, order] mentioned, and which costs have been taxed and allowed by one of the Taxing Masters of the said Court at the sum of £——, as appears by the certificate of the said Taxing Master dated the —— day of ——, 187—. And I further command you that of the goods and chattels of the said C. D. in my bailiwick you cause to be made the said sum of £——, and also interest at the rate of £4 per cent. per annum on the said sum of £——, from the —— day of ——, 187—, and on the said sum of £—— from the —— day of ——, 187—, so that I may have that money and interest before Her Majesty in the said Court immediately after the execution hereof, to be paid to the said A. B. in pursuance of the said judgment [*Or*, order]. And that you do all such things as by the statute passed in the second year of the reign of Queen Victoria I am authorised and required to do in this behalf. And in what manner you shall have executed this warrant certify to me immediately after the execution hereof.

Given under the seal of my office the —— day of ——, 187—.

By the sheriff.

Seal of office.

Levy [*&c. Give a direction to the bailiff to make a levy, corresponding to the indorsement on the writ, see ante* No. 1281].

(*d*) As to the execution of the writ, see Chitty's Arch. 618—625, and 645—675; Lush, Pr., 588—590; *Ibid.*, 595—609. For form of bill of sale by a sheriff of goods seized under a *fi. fa.*, see Chitty, Forms, p. 333.

(*e*) See Chitty, Forms, 320. The warrant must be in writing, and must be executed by the person to whom it is addressed; *Ibid.*, note (*a*). The warrant should follow the terms of the writ.

(3.) *Interpleader by the Sheriff* (*f*).

1292. Interpleader summons (*g*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Let the above-named plaintiff, the judgment creditor, his solicitor or agent, and also Mr. E. F., of [*residence and addition*], his solicitor or agent, attend at my Chambers, situate at [*State where*], on —— the —— day of ——, 187—, at —— of the clock in the ——noon, on the hearing of an application on the part of the sheriff of ——, that the said plaintiff and the said E. F. may be

(*f*) The procedure and practice formerly used by Courts of Common Law under the Interpleader Acts, 1 & 2 Wm. IV. c. 58, and 23 & 24 Vict. c. 126, now applies to all actions and all the divisions of the High Court of Justice; R. S. C. Ord. I. 2. When any claim is made by any person not being the party against whom execution is issued, to any goods or chattels taken, or intended to be taken in execution under any process, or to the proceeds or value thereof, the Court from which the process issued, or any Judge thereof, may, upon the application of the sheriff or other officer, call before them or him the party issuing the process, and also the party making such claim. If the claimant fails to appear, the Court or Judge may bar his claim to the goods in question; if the claimant appears and maintains his claim, the Court or Judge may, with the consent of the parties, or without such consent wherever from the smallness of the amount in dispute, or of the value of the goods seized, it appears to them or him desirable and right so to do, dispose of the merits of the respective claims of such parties and determine the same in a summary manner; or, if the question is one of law and the facts are not in dispute, the Judge may decide the question himself, or order a special case to be stated for the opinion of the Court; or the Court or Judge may direct an action to be brought or an issue to be tried, for the purpose of determining the rights of the parties; 1 & 2 Wm. IV. c. 58, s. 6; 1 & 2 Vict. c. 45, s. 2; 23 & 24 Vict. c. 126, ss. 14, 15. Where the claimant claims to be entitled to the goods or chattels by way of security for a debt, the Court or Judge may order a sale of the whole or part thereof, upon such terms as may seem just; 23 & 24 Vict. c. 126, s. 13. From a judgment of the Court upon a special case an appeal lies; but not from the judgment in an action or issue directed to try the right, nor from a decision of the Court or a Judge in a summary manner; 23 & 24 Vict. c. 126, ss. 16, 17; *Dodds* v. *Shepherd*, 1 Ex. D. 75; but see *Witt* v. *Parker*, 25 W. R. 518. Pending an interpleader issue, the execution creditor has no right to an immediate return of the writ; *Angel* v. *Baddeley*, 3 Exch. D. 49 (C. A.); 26 W. R. 137.

(*g*) The application must be supported by an affidavit; for form, see *post* No. 1293. As to the proceedings on the return of the summons, see note (*f*), *supra*. The claimant should support his case by an affidavit showing at least a *primâ facie* right.

ordered to state the nature and particulars of their respective claims to the goods and chattels seized by the said sheriff of —— under the writ of *fieri facias* issued in this action, and either to maintain or to relinquish their said claims, and that such order may be made for the adjustment of the said claims, and for the relief and protection of the said sheriff as shall appear to be just.

1293. Affidavit in support (*h*).

Formal parts: see ante No. 693.

I, X. Y., of [*address*], officer to the sheriff of ——, make oath and say as follows:

1. Under and by virtue of a writ of *fieri facias*, which appeared to me to have been regularly issued out of this honourable Court in this action directed and delivered to the said sheriff commanding him that he should cause to be made of the goods and chattels of the above-named defendant C. D. the sum of [*State what, as in the body of the writ*], and indorsed to levy [*State what, as in the indorsement*], and also by virtue of a warrant of the said sheriff granted on the said writ and to me directed, I did on the —— day of ——, 187—, take possession of certain goods and chattels in the dwelling house of the said defendant, situate at ——, in the said county, and the said goods and chattels still remain in my possession as officer of the said sheriff.

2. [*State the claim set up by a third party, as thus:*] On the —— day of ——, 187—, I was served with a notice, of which the following is a copy [*Here copy the notice to withdraw, if any, served upon the officer*].

3. This application is made solely on my behalf as officer to the said sheriff, at my own expense and for my own relief and protection, and for the relief and protection of the said sheriff, and I do not nor does the said sheriff in any manner collude with the said E. F. or with the above-named plaintiff.

(4.) *The Return of the Writ* (*j*).

1294. Motion paper for order for sheriff to return writ (*k*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*or as may be*], that the

(*h*) See Chitty's Forms, p. 822.

(*j*) As to the return of the writ, see Chitty's Arch. 625—635; *Ibid.*, 675—678. Pending an interpleader issue, an execution creditor has no right to an immediate return of the writ; *Angel* v. *Baddeley*, 3 Exch. D. 49 (C. A.); 26 W. R. 137. On filing a writ of execution with returns thereto, a fee is payable of 2*s.*, by means of a stamp impressed upon or adhesive to the writ; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April 1876; Wilson, 506, 522.

(*k*) The sheriff does not usually return a writ of *fi. fa.* unless he is ordered to do so. It is necessary to compel a return in the following cases: where

[late (*l*)] sheriff of ——, may be ordered, within —— (*m*) days after service of the order to be made hereon upon him or his under-sheriff or deputy (*n*), to return the writ of *fieri facias* issued in this action.

1295.

Return of *fieri feci* (*o*).

By virtue of the within [*Or*, annexed (*p*)] writ to me directed, I have caused to be made of the goods of the within [*Or*, therein] named C. D., the moneys and interest within [*Or*, therein] mentioned, which I have ready to pay to the within [*Or*, therein] named A. B., as by the said writ I am commanded.

The answer of X. Y., esquire, sheriff.

1296.

Return of *nulla bona* (*q*).

The within-named C. D. has no goods or chattels in my bailiwick whereof I can cause to be made the moneys and interest within mentioned, or any part thereof, as within I am commanded.

The answer of X. Y., esquire, sheriff.

1297.

Return of *fieri feci* for part, and *nulla bona* as to residue (*r*).

By virtue of the annexed writ (*s*), to me directed, I have caused to be made of the goods and chattels of the therein-named C. D. £——; out of which I have retained £—— for levying the said

the sheriff has levied part only under the writ; see *post* No. 1301; where the sheriff has seized goods which remain in his hands for want of buyers; see *post* No. 1305; and where the person against whom execution is issued is a beneficed clerk having no goods or chattels nor any lay fee; see *post* Nos. 1363 and 1368. As to the application for an order to return the writ, see Chitty's Arch. 625—628. As to the service of the order, see note (*g*) to No. 1264 *ante*; and Chitty's Arch. 627. As to enforcing the order by attachment, see Chitty's Arch. 632—635. For forms of notice of motion to commit for disobeying the order and of writ of attachment, see *post* Nos. 1375, 1378.

(*l*) As to ordering a sheriff to make return after he has gone out of office, see Chitty's Arch. 626, 627.

(*m*) If the order is on the Sheriffs of London or the Sheriff of Middlesex, the time is four days; in other cases eight days; Reg. Gen. H. T. 1853, rule 130.

(*n*) If the order is on the Sheriffs of London, say "upon them or their secondaries."

(*o*) As to this return, see Chitty's Arch. p. 675.

(*p*) The return may be either indorsed upon the writ, or set forth in a schedule annexed to the writ. In the latter case the writ should be indorsed as follows: "The execution of this writ appears in the schedule hereto annexed. The answer of X. Y., esquire, Sheriff."

(*q*) As to this return, see Chitty's Arch. p. 676.

(*r*) As to this return, see Chitty's Arch. p. 676.

(*s*) See note (*p*) to No. 1295 *ante*.

execution, keeping possession of the said goods and chattels, and for poundage; and the residue thereof, being £——, I have ready to pay to the therein-named A. B.: as by the said writ I am commanded. And I further certify that the said C. D. hath not any other goods or chattels in my bailiwick whereof I can cause to be made the residue of the said moneys and interest, in the writ mentioned, or any part thereof.

The answer of X. Y., esquire, sheriff.

1298.

Return that sheriff has taken goods which remain on his hands, for want of buyers (*t*).

By virtue of the annexed (*u*) writ, to me directed, I have taken goods and chattels of the therein-named C. D. to the value of the moneys and interest therein mentioned [*Or*, to the value of £——], which goods and chattels remain in my hands unsold for want of buyers; therefore I cannot have that money before our lady the Queen, as therein I am commanded [*If the value returned be less than the amount ordered to be levied, add:*] And I further certify that the said C. D. hath not any other goods [*Continue as in* No. 1297 *ante, to end*].

1299.

Return of *nulla bona*, and that execution debtor is a beneficed clerk (*v*).

The within-named C. D. has not any goods or chattels, nor any lay fee in my bailiwick, whereof I can cause to be made the moneys and interest within mentioned, or any part thereof, as within I am commanded; but I do hereby certify that the said C. D. is a beneficed clerk, to wit, rector of the rectory [*Or*, vicar of the vicarage] and parish church of ——, in my county, which said rectory [*Or*, vicarage] and parish church, are within the diocese of the reverend father in God, ——, by divine permission, Lord Bishop of ——.

The answer of X. Y., esquire, sheriff.

(5.) *Writ of fieri facias for residue of Debt after levy of Part* (*w*).

1300.

Præcipe for writ (*x*).

[*Same as* No. 1277 *ante.*]

(*t*) As to this return, see Chitty's Arch. p. 679.

(*u*) See note (*p*) to No. 1295 *ante*.

(*v*) As to this return, see Chitty's Arch. p. 1283. Upon this return a writ of *fi. fa. de bonis ecclesiastiris* or of *sequestrari facias de bonis ecclesiasticis* may issue; see *post* Nos. 1363, 1368.

(*w*) Where any sum, however trifling, has been levied under one writ, no other writ may be issued until the former has been returned, and the second writ must recite the former writ and the return thereto. As to the issuing, &c., of the writ, see the notes to No. 1278 *ante*. The writ is executed, and returned like an ordinary *fi. fa.*, as to which, see note (*b*) to No. 1278 *ante*, and Nos. 1291 to 1299 *ante*.

(*x*) See note (*a*) to No. 1277 *ante*.

1301. Writ of *fi. fa.* for residue of debt after levy of part (*ww*).

[*Proceed as in* No. 1278 *ante, down to* "greeting;" *and continue thus:*]

Whereas by our writ we lately commanded

[*If the writ is directed to the same sheriff as the former writ, say:*] you,

[*If the writ is directed to the sheriff of another county, say:*] our sheriff of ——,

that of the goods and chattels of C. D. in your [*Or*, his] bailiwick, you [*Or*, he] should cause to be made [*Here recite the former fi. fa. to the end*]. And on the —— day of ——, 187—, you [*Or*, the said sheriff] returned to us in the Chancery Division of our High Court of Justice aforesaid, that by virtue of the said writ to you [*Or*, him] directed, you [*Or*, he] had caused to be made [*Here recite the return to the end*]. Therefore, we command you, that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made the sum of £——, being the residue of the said two several sums of £—— and £——, together with interest on the sum of £——, at the rate of £4 per cent. per annum, from the —— day of ——, 187—. And that you have that money and interest [*Conclude as in* No. 1278 *ante*].

1302. Indorsement of name and address of party issuing writ (*xx*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

1303. Indorsement of amount to be levied (*y*).

[*Same as* No. 1281 *ante.*]

(6.) *Writ of Venditioni Exponas.*

1304. *Præcipe* for writ of *venditioni exponas* (*z*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge.*]

Between A. B. . . . Plaintiff,

and

C. D. and others . Defendants.

Seal a writ of *venditioni exponas* directed to the sheriff of ——,

(*ww*) See note (*w*) at p. 708 *supra.*

(*xx*) See note (*m*) to No. 1279 *ante.*

(*y*) See note (*n*) to No. 1281 *ante.*

(*z*) See note (*a*) to No. 1277 *ante.* For form, see R. S. C. App. (E.), No. 3.

to sell the goods and chattels of C. D., taken under a writ of *fieri facias* in this action, tested —— day of —— [*Date of issuing fi. fa.*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing writ; see ante* No. 92.]

1305. Writ of *venditioni exponas* (*a*).

187—. B. No. 92.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the sheriff of —— (*a a*), greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*Here recite the fieri facias to the end*]. And on the —— day of ——, you returned to us in the Chancery Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed, you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid [*or as may be; as in return*], which said goods and chattels remained in your hands unsold for want of buyers. Therefore we, being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said High Court of Justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness [*Conclude as in* No. 1278 *ante*].

(*a*) Where it appears upon the return of a writ of *fi. fa.* that the sheriff or other officer has, by virtue of such writ, seized, but not sold, any goods of the person against whom execution is issued, the person to whom any money is payable under the judgment may immediately after such writ of *fi. fa.* with the return thereto shall have been filed as of record, sue out a writ of *venditioni exponas;* Cons. Ord. XXIX. 9; R. S. C. Ord. XLIII. 2. As to this writ, see Chitty's Arch. 678, 679. For form of writ, see R. S. C. App. (F.), No. 3. As to the issuing, &c., of the writ, see note (*b*) to No. 1278 *ante*. Upon the delivery of the writ the sheriff is bound to sell; Chitty's Arch. 679. As to compelling the sheriff to return the writ, see *ante* No. 1294 and note (*k*) thereto.

(*a a*) As to the direction of the writ, see note (*f*) to No. 361, and No. 364 *ante*.

1306. Indorsement of name and address of party issuing writ (*b*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

1307. Indorsement of amount to be levied (*bb*).

[*Same as* No. 1281 *ante.*]

(7.) *Writ of Distringas nuper Vicecomitem.*

1308. *Præcipe* for writ of *distringas nuper vicecomitem* (*c*).

Formal parts: as in No. 1277 *ante.*

Seal a writ of *distringas nuper vicecomitem quod venditioni exponat* directed to the sheriff of ——, to sell the goods and chattels of C. D., taken under a writ of *fi. fa.* in this action, tested the —— day of ——, 187—.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing writ, as in* No. 92 *ante.*]

1309. The writ (*d*).

[*Proceed as in* No. 1278 *ante, down to* "greeting;" *and continue thus:*] We command you, that you distrain X. Y., late sheriff of your county aforesaid, by all his lands and chattels in your bailiwick, so that neither he nor any one by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said X. Y. expose to sale, and sell or cause to be sold, for the best price that can be gotten for the same, those goods and chattels which were of C. D. in your bailiwick, to the value of £——, the amount of [*Or*, parcel of] the sum of £——,

(*b*) See note (*m*) to No. 1279 *ante.*

(*bb*) See note (*n*) to No. 1280 *ante.*

(*c*) See note (*a*) to No. 1277 *ante.*

(*d*) Where after returning that he has levied, and that the goods remain in his hands for want of buyers, the sheriff goes out of office, a writ of *distringas nuper vicecomitem* should be sued out; Chitty's Arch. 679, 680; R. S. C. Ord. XLIII. 2. As to the issuing, &c., of the writ, see note (*b*) to No. 1278 *ante.* As to the execution of the writ, see Chitty 's Arch. 680. As to compelling the sheriff to return the writ, see *ante* No. 1294, and note thereto.

which lately before us in our High Court of Justice in a certain action wherein A. B. is plaintiff, and C. D. and others are defendants, by a judgment [*Or*, order] of our said Court, bearing date the —— day of ——, 187—, was adjudged [*Or*, ordered] to be paid by the said C. D. to A. B., and of the sum of £——, the amount at which the costs in the said judgment [*Or*, order] mentioned have been taxed and allowed by one of the Taxing Masters of our said Court, and of interest on the said sum of £——, at the rate of £4 per cent. per annum, from the —— day of ——, 187—, and on the said sum of £—— at the same rate, from the —— day of ——, 187—; and which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in the Chancery Division of our High Court of Justice aforesaid, and have the money arising from such sale before us in our said High Court of Justice immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

Witness [*Conclude as in* No. 1278 *ante*].

1310. Indorsement of name and address of party issuing writ (*e*).

[*Same as* No. 1279 *or* No. 1280 *ante*.]

1311. Indorsement of amount to be levied (*f*).

[*Same as* No. 1281 *ante*.]

Section V.—The Writ of Elegit and Writs in aid Thereof.

(1.) *Issuing the Writ.*

1312. *Præcipe* for writ of *elegit* (*g*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge.*]

Between A. B. . . . Plaintiff,

and

C. D. and others . Defendants.

Seal a writ of elegit directed to the sheriff of —— against C. D. of —— in the county of ——, for not paying to A. B. the sum of £——, together with interest thereon, from the —— day of

(*e*) See note (*m*) to No. 1279 *ante*.

(*f*) See note (*n*) to No. 1281 *ante*.

(*g*) See note (*a*) to No. 1277 *ante*; for form, see R. S. C. App. (E), No. 2.

—— 187—, and the sum of £—— for costs, with interest thereon at the rate of £4 per centum per annum.

Judgment [*Or*, Order] dated —— day of —— 187—.

Taxing master's certificate dated —— day of —— 187—.

[*Name and address of solicitor or party issuing the writ, as in* No. 92 *ante*.]

1313

Writ of *elegit* (*h*).

In the High Court of Justice, Chancery Division. 187—. B. No. .

[*Name of Judge*.]

Between A. B. . . . . Plaintiff,

and

C. D. and others . . Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the sheriff of —— (*j*) greeting.

Whereas lately in our High Court of Justice in a certain action there depending, wherein A. B. is plaintiff and C. D. and others are defendants [*Or*, in a certain matter there depending, intituled "In the matter of E. F.; [*or, as the case may be*] by a judgment [*Or*, order] of our said Court made in the said action [*Or*, matter] and bearing date the —— day of ——, it was adjudged [*Or*, ordered] that C. D. should pay unto A. B. the sum of £—— (*k*), together with certain costs as in the said judgment [*Or*, order]

(*h*) A writ of elegit may issue upon any judgment for the recovery by or payment to any person of money; R. S. C. Ord. XLII. 1, 15; Ord. XLIII. The writ may (except in the cases mentioned in note (*a*) at p. 687 *ante*) issue immediately that the judgment is entered, unless the execution is stayed by the Court or a Judge; R. S. C. Ord. XLII. 15; and no service of the judgment is necessary before issuing the *elegit*; *Ibid.*; *Ex parte Munster*, L. R. 5 Ch. 323. As to the cases in which it is necessary to obtain the leave of the Court or a Judge to issue the writ, see *ante*, note (*k*), at p. 693. As to the writ, see Chitty's Arch. 682—693. For form of writ, see R. S. C. App. (F), No. 2; the writ must be so moulded as to follow the substance of the judgment or order, and if it departs therefrom it must show upon its face a valid reason for so doing; see the note to form No. 1 in App. (F) to the Rules of the Supreme Court; and Chitty's Arch. 604—607. As to issuing the writ, and the fee payable thereon, see note (*b*) to No. 1278 *ante*. As to the renewal of the writ, see *post* Nos. 1399 to 1401, and notes thereto. As to what interests of the debtor may be delivered in execution under the writ, see 1 & 2 Vict. c. 110, s. 11; *Re Cowbridge Ry. Co.*, L. R. 5 Eq. 413; *Hatton* v. *Haywood*, L. R. 9 Ch. App. 229; *Re South*, L. R. 9 Ch. App. 369. As to the execution of the writ, see Chitty's Arch. 618—625; *Ibid.*, 689, 690; and *post* Nos. 1320—1323, and notes thereto. As to the return of the writ, see Chitty's Arch. 625—635; *Ibid.* 690; and *post* Nos. 1324—1326, and notes thereto.

(*j*) As to the direction of the writ, see note (*f*) to No. 361, and No. 364 *ante*.

(*k*) Here insert the full amount of the debt or damages for which judgment is recovered, even though some part thereof may have been satisfied.

mentioned, and which costs have been taxed and allowed by C. S. esquire, one of the taxing masters of our said Court, at the sum of £——, as appears by the certificate of the said taxing master, dated the —— day of ——. And afterwards the said A. B. came into our said Court, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of on the —— day of —— in the year of our Lord —— (*l*), or at any time afterwards, or over which the said C. D. on the said —— day of —— (*l*), or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £—— (*m*), and £—— (*n*), together with interest upon the said sum of £—— (*m*), at the rate of £4 per centum per annum from the said —— day of —— (*o*) and on the said sum of £—— (*n*), at the rate of £4 per centum per annum from the —— day of —— (*p*), shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any person or persons in trust for him, was or were seised or possessed of on the said —— day of —— (*q*), or at any time afterwards, or over which the said C. D. on the said —— day of —— (*q*), or at any time afterwards, had any disposing power which he might without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B., as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of £—— (*m*) and £—— (*n*), together with interest as aforesaid, shall have been levied. And

(*l*) Date of judgment or order.

(*m*) Amount of debt or damages.

(*n*) Amount of taxed costs.

(*o*) The date of the judgment or order, unless by the judgment or order interest is ordered to run from some other date.

(*p*) Date of taxing-master's certificate.

(*q*) Date of judgment or order.

in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness [*conclude as in* No. 1278 *ante.*]

1314. Indorsement of name and address of party issuing the writ (*r*).

[*Same as* No. 1279, *or* No. 1280 *ante.*]

1315. Indorsement of amount to be levied (*s*).

[*Same as* No. 1281 *ante.*]

1316. *Præcipe* for writ of *elegit* for residue of debt where part has been levied under a *fi. fa.* (*t*).

[*Same as* No. 1312 *ante.*]

1317. Writ of *elegit* in like case (*u*).

[*Proceed as in* No. 1313 *ante, down to:* "certificate of the said taxing master, dated the —— day of —— 187—;" *and continue thus:*] And whereupon by our writ we lately commanded

[*If the writ of elegit is directed to the same sheriff as the writ of fi. fa., say:*] you,

[*If the writ of elegit is directed to the sheriff of another county, say:*] our sheriff of ——,

that of the goods and chattels of C. D. in your [*Or,* his] bailiwick, you [*Or,* he] should cause to be made, the said two several sums of £—— and £——, and also interest at the rate of £4 per centum per annum on the said sum of £——, from the —— day of —— 187—, and on the said sum of £—— from the —— day

(*r*) See note (*m*) to No. 1279 *ante.*

(*s*) See note (*n*) to No. 1281 *ante.*

(*t*) See note (*a*) to No. 1277 *ante.*

(*u*) See note (*w*) at p. 708 *ante.* As to the issuing, &c., of the writ, see the notes to Nos. 1278 and 1313 *ante.* The writ is executed and returned like an ordinary *elegit,* as to which, see note (*h*) to No. 1313 *ante,* and *post* Nos. 1320—1326, and notes thereto.

of —— 187—. And that you [*Or*, he] should have that money and interest [*continue as in fi. fa. to the end:*] and on the —— day of —— 187—, you [*Or*, the said sheriff] returned to us in the Chancery Division of our High Court of Justice aforesaid, that by virtue of the said writ to you [*Or*, him] directed you [*Or*, he] had caused to be made [*here recite the return to the end*]. And afterwards the said A. B. came into our said Court, and according to the statute [*Continue as in* No. 1313 *ante, down to the first* until; *and proceed thus:*] the sum of £ ——, residue of the said two several sums of £ —— and £ ——, and interest as aforesaid, shall have been levied. Therefore we command you [*proceed as in* No. 1313 *ante, down to the second* until, *and continue:*] the said sum of £ ——, residue of the said two several sums of £—— and £——, together with interest as aforesaid, shall have been levied. And in what manner [*continue as in* No. 1313 *ante, to end*].

1318. Indorsement of name and address of party issuing writ (*v*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

1319. Indorsement of amount to be levied (*w*).

[*Same as* No. 1281 *ante.*]

(2.) *Execution of the writ* (*x*).

1320. *Præcipe* for *subpœna ad testificandum*, before the sheriff, upon the execution of a writ of *elegit* (*y*).

[*Same as* No. 626 *ante.*]

(*v*) See note (*m*) to No. 1279 *ante.*

(*w*) See note (*n*) to No. 1281 *ante.*

(*x*) Upon the receipt of the *elegit* the sheriff must empannel a jury to inquire of the goods and chattels of the judgment debtor, and appraise the same, and also of his lands and tenements, and their value. No notice of the holding of this inquisition need be given to the judgment debtor. The attendance of witnesses before the jury may be enforced by writs of *subpœna ad test.* and *subpœna duces tecum;* see *post* Nos. 1320 to 1323. After the inquisition had, the sheriff must deliver the debtor's goods and chattels to the creditor at the price set upon them by the jury, and, if the judgment debt be not thoroughly satisfied, he must also deliver to the creditor the possession of the debtor's lands. As to what interests of the debtor may be delivered under the *elegit*, see 1 & 2 Vict. c. 110, s. 11; *Re Cowbridge Ry. Co.*, L. R. 5 Eq. 413; *Hatton* v. *Haywood*, L. R. 9 Ch. App. 229; *Re South*, L. R. 9 Ch. App. 369. The sheriff must then return the writ and inquisition. The creditor who is thus put in possession of his debtor's land, may hold it until out of the issues thereof his debt and interest are paid, in which case he is liable to account as a mortgagee in possession; Chitty's Arch. 692, 693; or he may present a petition to the Chancery Division for the sale of his debtor's interest in the land; 27 & 28 Vict. c. 112, s. 4; see *post* No. 1328. As to the execution of the writ, see Chitty's Arch. 691, 692.

(*y*) See Cons. Ord. XXVIII. 1.

1321. The like for *subpœna ad test.* and *duces tecum*, in like case (*y*).

[*Same as* No. 566 *ante.*]

1322. Writ of *subpœna ad test.* (and *duces tecum*) before sheriff, on execution of writ of *elegit* (*z*).

[*Proceed as in* No. 627 *ante, down to* appear before ; *and continue thus :*] our sheriff of —— at [*state where*] on —— the —— day of —— 187—, by — of the clock in the forenoon of the same day, to testify the truth according to your knowledge in a certain action now depending in our High Court of Justice wherein A. B. is plaintiff, and C. D. and others are defendants, on the part of the plaintiff, in which action an inquiry will be then and there made of the goods and chattels of C. D. [*Name of person against whom elegit issued*], in the bailiwick of the said sheriff : except his oxen and beasts of the plough : and also of all such lands and tenements, rectories, tithes, rents, and hereditaments : including lands and hereditaments of copyhold or customary tenure : in his said bailiwick, as the said C. D., or any person or persons in trust for him, was or were seised or possessed of on the —— day of —— [*the day mentioned in the elegit*], or at any time afterwards, or over which the said C. D., on the —— day of ——, or at any time afterwards, had any disposing power which he might, without the assent of any other person or persons, exercise for his own benefit ;

[*In the case of a subpœna duces tecum, add :*] and that you then and there bring with you and produce [*Specify* (*a*) *the documents to be produced, as in* No. 567 *ante*].

And hereof fail not at your peril.

Witness [*Conclude as in* No. 627 *ante*].

1323. Indorsement on subpœna (*b*).

[*Same as* No. 94 *or* No. 95 *ante.*]

(*y*) See Cons. Ord. XXVIII. 1.

(*z*) See note (*b*) to No. 567 *ante*, and note (*d*) to No. 627 *ante ;* and see *Holder* v. *Lane* (1866, H. 238), *subpœna* sealed 9 May, 1868 ; *Corporation of Hythe* v. *East* (1865, H. 229), *subpœna* sealed 4 Sept. 1869 ; *Healey* v. *Chichester, &c. Railway* (1868, H. 54), *subpœna* sealed 19 Nov. 1869.

(*a*) See note (*d*) to No. 567 *ante.*

(*b*) See Cons. Ord. III. 2, 5.

1324. Return where lands have been extended.

(3.) *The return of the writ* (*c*).

The execution of this writ appears in the inquisition hereunto annexed.

The answer of X. Y., esquire, sheriff.

1325. The inquisition (*d*).

—— to wit.—An inquisition, indented, taken at the house known as [*state where*], in the said county, on the —— day of ——, A.D. 187—, before me —— esquire, sheriff of the county aforesaid, by virtue of Her Majesty's writ of *elegit* to me the said sheriff directed, and to this inquisition annexed, on the oath of [*Names of the twelve jurors*], good and lawful men of my bailiwick: who, being duly sworn and charged to inquire of the several matters in the said writ mentioned, on their oath say, that C. D. [*Name of the person against whom elegit issued*], in the said writ named, on the day of taking this inquisition,

[*If the execution debtor had no goods or chattels, say:*] had no goods or chattels in my bailiwick to the knowledge of the said jurors.

[*If the execution debtor had goods or chattels, say:*] was possessed of the goods and chattels following, to wit, [*here describe the goods*] of the price of £——, as of his own proper goods and chattels, which said goods and chattels I, the said sheriff, have caused to be delivered to the said A. B. to hold the same to him as his proper goods and chattels in part satisfaction of the moneys and interest in the said writ mentioned as by the said writ I am commanded.

And the jurors aforesaid, on their oath aforesaid, further say that the said C. D. on the —— day of —— 187— (*e*), was [*here describe the premises and the estate of the judgment debtor therein; as thus:*] seised in his demense as of fee of a dwelling house and premises situate and being No. —, in —— Street, in the parish of ——, in the said county of ——, which said dwelling house and premises the jurors aforesaid, on their oath aforesaid, do find to be of the annual value of £——; and which said dwelling house and premises I, the said sheriff, on the day of taking this inquisition, have caused to be delivered to the said A. B. by a reasonable price and extent, as by the said writ I am commanded;

(*c*) As to the return of the writ, see Chitty's Arch. pp. 625—635; *Ibid.*, 690; as to the Court fee payable on the return, see note (*j*) at p. 706 *supra*. When lands are extended under the writ, the sheriff ought to return it; in other cases, he does not, in general, do so, unless ordered to do so; but in any case he may be ordered to do so; for form of application for the order, see *ante* No. 1294; as to service of the order and enforcing the same by attachment, see note (*k*) to No. 1294 *ante*.

(*d*) The inquisition must be engrossed on parchment, and indented at the top, and sealed by the sheriff and the jurors. It must describe particularly the lands extended, the estate therein of the judgment debtor, and the value thereof; see Chitty's Arch. 689, 690.

(*e*) Date of judgment or some subsequent day.

To hold the same to him the said A. B., and his assigns, according to the nature and tenure thereof, until the moneys in the said writ mentioned, with interest, as in the said writ also mentioned, shall have been levied. And the jurors aforesaid, upon their oath aforesaid, further say, that the said C. D. was not

[*If any goods and chattels have been found and delivered under the writ, say:*] on the day of taking this inquisition as aforesaid, possessed of any other or more goods or chattels in my bailiwick to the knowledge of the said jurors; nor was the said C. D.

nor was nor were any person or persons in trust for him on the said — — day of —— 187— (*e*), or at any time afterwards, seised or possessed of, nor had the said C. D. on the said —— day of —— 187— (*e*), or at any time afterwards, any disposing power which he might, without the assent of any other person, exercise for his own benefit over, any other or more lands or tenements, rectories, tithes, rents, or hereditaments, nor of nor over any lands or hereditaments of copyhold or customary tenure within my bailiwick, to the knowledge of the said jurors, which I, the said sheriff, can cause to be extended and appraised, as by the said writ I am commanded. In witness whereof I, the said sheriff, have hereto set my seal, and the jurors aforesaid have set their seals, the day, year, and place first above written.

X. Y., esquire, sheriff Seal.

A. A.
B. B.
&c. } [*Seals of the jurors.*]

1326. Return of nihil.

The within-named C. D. has no goods nor chattels, nor any lands or tenements, rectories, tithes, rents, or hereditaments, nor any lands or hereditaments of copyhold or customary tenure within my bailiwick, whereof I can cause to be levied the moneys and interest within mentioned, or any part thereof, as within I am commanded.

1327. Notice of motion or summons by judgment debtor for account of profits received by judgment creditor to whom lands have been delivered (*f*).

(4.) *Taking an account under an elegit.*

Formal parts: see post No. 1571 *or ante* No. 881.

On the part of the defendant C. D. [*or, as may be.*]

1. That an account may be taken of what is due to the above-named plaintiff on the judgment [*Or*, order] made in this action

(*e*) Date of judgment.

(*f*) By 1 & 2 Vict. c. 110, s. 11, a tenant by *elegit* is made subject to such account, in the Court out of which the writ of *elegit* is sued, as a tenant by

on the —— day of —— 187—, and for his costs of this application and consequent thereon, such costs to be taxed.

2. That an account may be taken of the rents, issues and profits of [*describe the premises as in the return to the elegit*] being the premises whereof possession was on the —— day of —— 187—, delivered to the plaintiff by the sheriff of ——, under and by virtue of a writ of *elegit* issued in this action on the said judgment [*Or*, order] on the —— day of —— 187—, received by the said A. B. or by any other person or persons by his order, or for his use, or which without his wilful neglect or default might have been so received (*g*).

3. That if upon taking the said accounts it shall appear that the amount of the said rents, issues, and profits so received by the said A. B. as aforesaid, is less than the amount which shall appear to be due to the said A. B. upon the said judgment [*Or*, order] and for costs as aforesaid, then the said C. D. may be at liberty to pay to the said A. B. what shall appear to be due to him upon the said judgment [*Or*, order] and for costs as aforesaid, after deducting what shall appear to have been received by him for rents, issues, and profits as aforesaid. And that upon such payment being made, the said A. B. may be ordered to deliver possession of the said [*premises*] to the said C. D.

[*If the judgment and writ of execution have been registered* (*h*) *add:*] and also to procure satisfaction to be entered in the books kept by the Senior Master of the Common Pleas Division of this Court in respect of the said judgment [*Or*, order] and of the said writ of *elegit*.

4. That if upon taking the said accounts it shall appear that the amount of the said rents, issues, and profits so received by the said A. B. as aforesaid, is greater than the amount which shall appear to be due to the said A. B., upon the said judgment [*Or*, order] and for costs as aforesaid, then the said A. B. may be ordered to pay to the said C. D. what shall appear to have been received by him for rents, issues, and profits as aforesaid, after deducting what shall appear to be due to him upon the said judgment [*Or*, order] and for costs as aforesaid. And that the said A. B. may also be ordered to deliver possession of the said [*premises*] to the said C. D. [*Continue as in paragraph* No. 3 *supra.*]

elegit was formerly subject to in a Court of Equity. In taking the account, the tenant is treated as a mortgagee in possession; Chitty's Arch. 693. He is liable therefore to account for what he might have received without his wilful default; *Anon.*, 1 Vern. 45; *Hughes* v. *Williams*, 12 Ves. 493; *Rowe* v. *Wood*, 2 Jac. & W. 556; Fisher, 943.

(*g*) See the cases cited, *supra*, note (*f*).

(*h*) As to the registration of judgments, see *ante*, p. 467, note (*a*). As to the registration of writs of execution and entering satisfaction thereon, see *post* Nos. 1403 to 1406.

(5.) *Application for sale of judgment debtor's interest in land delivered under a writ of elegit.*

1328. Petition under 27 & 28 Vict. c. 112, for sale of lands extended under an elegit (*j*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the Matter of an Act passed in the Session held in the 27th & 28th years of the reign of Her present Majesty entitled "An Act to amend the law relating to future judgments, statutes, and recognizances."
And in the matter of C. D. of [*address and description*].
To Her Majesty's High Court of Justice.
The humble petition of A. B. of [*address and description*].
Showeth as follows:
1. By a judgment [*Or*, By an order] of this Honourable Court, made in an action there depending, wherein your petitioner was

(*j*) Every creditor to whom any land of his debtor shall have been actually delivered in execution by virtue of a judgment, and whose writ of execution is duly registered, is entitled forthwith, or at any time afterwards, while the registry of the writ continues in force, to obtain from the Chancery Division of the High Court of Justice, upon petition in a summary way, an order for the sale of his debtor's interest in such land; and every such petition may be served upon the debtor only; and thereupon the Court is to direct all such inquiries to be made as to the nature and particulars of the debtor's interest in such land, and his title thereto, as shall appear to be necessary or proper; and in making such inquiries, and generally in carrying into effect the order for sale, the practice of the Court with respect to sales of real estates of deceased persons for the payment of debts, is to be adopted and followed so far as the same may be found conveniently applicable; 27 & 28 Vict. c. 112, s. 4; Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34, subs. 2; *Ibid.*, s. 76. If it appear, on making such inquiries, that any other debt due on any judgment, statute, or recognizance, is a charge on such land, the creditor entitled to the benefit of such charge (whether prior or subsequent to the charge of the petitioner) must be served with notice of the order for sale, and after such service he will be bound thereby, and will be at liberty to attend the proceedings under the same, and to have the benefit thereof; and the proceeds of sale will be distributed among the persons entitled thereto according to their respective priorities; 27 & 28 Vict. c. 112, s. 5. As to service of notice of an order, see *ante* Nos. 20 to 39. Every person claiming any interest in the land through or under the debtor by any means subsequent to the delivery of such land in execution, is bound by the order for sale, and the proceedings consequent thereon; 27 & 28 Vict. c. 112, s. 6. A creditor can only apply by petition under this Act where the land has been actually delivered in execution; *Re Cowbridge Railway Co.*, L. R. 5 Eq. 413. As to what interests of a debtor may be actually delivered in execution, see *ante* note (*c*), at p. 716. As to the remedy of a judgment creditor, where his debtor's interest can not be actually delivered in execution, and who consequently can not apply by petition under the Act, see *Re Cowbridge Railway Co.*, L. R. 5 Eq. 413; *Guest* v. *Cowbridge Railway Co.*, L. R. 6 Eq. 619; *Beckett* v. *Buckley*, L. R. 17 Eq. 435; *Wells* v. *Kilpin*, L. R. 18 Eq. 298; *Hatton* v. *Haywood*, L. R. 9 Ch. App. 229. For forms of order on petition under this Act, see *Re Kirby*,

plaintiff, and the above named C. D. was defendant, and bearing date the —— day of ——, 187—, your petitioner recovered against the said C. D. the sum of £——, together with certain costs, as in the said judgment [*Or,* order] mentioned, and which costs were afterwards taxed and allowed by C. S., esquire, one of the taxing masters of this Court, at the sum of £——, as appears by the certificate of the said taxing master, dated the —— day of ——, 187—.

2. On the —— day of ——, 187—, your petitioner caused a writ of elegit to be sued out of this Honourable Court, directed to the sheriff of ——, commanding him that without delay he should cause to be delivered to your petitioner, by a reasonable price and extent, all the goods and chattels of the said C. D. in the bailiwick of the said sheriff, excepting his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in the said bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the —— day of ——(*k*), or at any time afterwards, or over which the said C. D. on the said —— day of —— (*k*), or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit: to hold the said goods and chattels to your petitioner, as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £—— (*l*) and £ —— (*n*), together with interest after the rate of £4 per centum per annum on the said sum of £—— (*l*) from the —— day of ——, 187—(*m*), and on the said sum of £——(*n*), from the —— day of ——, 187— (*o*), should have been levied.

3. The said writ of elegit was duly delivered to the said sheriff of ——, and by virtue thereof the said sheriff duly caused an inquisition to be held at [*State where, as in the return,*] on the —— day of ——, 187—, before the said sheriff, when a jury of the said county being duly sworn and charged to inquire of the several matters in the said writ mentioned, found that on the —— day of ——, 187— (*p*), the said C. D. had no goods or chattels in the said county to the knowledge of the said jurors, but that the said

M. R. 23 June, 1866, Reg. Lib. A. 1413; *Re Hull and Hornsea Railway Co.*, L. R. 2 Eq. 262; *Re Bishops Waltham Railway Co.*, L. R. 2 Ch. App. 382; *Gardner* v. *London, Chatham, and Dover Railway Co., Ex parte Grissell*, L. R. 2 Ch. App. 385; *Re Calne Railway Co.*, L. R. 9 Eq. 658. For forms of proceedings in Chambers, where an order for sale is made, see *ante* Nos. 1100—1189.

(*k*) Date of the judgment or order.

(*l*) Amount of debt or damages.

(*m*) Date from which interest directed by the judgment or order to run, or date of judgment or order.

(*n*) Amount of taxed costs.

(*o*) Date of taxing master's certificate.

(*p*) Date of inquisition.

C. D. was on the —— day of ——, 187— (*q*), seized in his demesne as of fee of a dwelling house and premises situate and being No. —, in —— Street, in the parish of ——, in the said county of ——, which said dwelling house and premises were of the value of £——, [*or as may be, as in return*].

4. On the —— day of ——, 187—, the said sheriff delivered to your petitioner possession of the said dwelling house and premises to hold to your petitioner and his assigns according to the nature and tenure thereof, until the moneys in the said writ mentioned with interest as therein mentioned, should have been levied.

5. On the —— day of ——, 187—, the said sheriff duly returned the said writ, and the said writ and the return have been duly filed as of record in this Honourable Court.

6. The said writ of elegit was on the —— day of ——, 187—, duly registered with the Senior Master of the Common Pleas Division of this Honourable Court in the manner prescribed by the Statute 27 & 28 Vict. c. 112, s. 3, and such registry continues and is now in force (*r*).

7. The said two several sums of £—— (*s*) and £—— (*t*), together with interest at the rate of £4 per centum per annum on the said sum of £—— (*s*), from the —— day of ——, 187— (*u*), and on the said sum of £—— (*t*), from the —— day of ——, 187— (*v*), still remain due and owing to your petitioner upon and by virtue of the said judgment [*Or*, order].

Your petitioner therefore humbly prays, that the interest of the said C. D., in the said dwelling house and premises [*or as may be*] and hereditaments which have been delivered in execution to your petitioner as aforesaid, may be sold; and that the money arising from such sale may be applied in payment to your petitioner of what is due to him under the said judgment [*Or*, order] of the —— day of ——, 187—; Or, if there are any other charges on the said dwelling house and premises and hereditaments, that the proceeds of the said sale may be applied in payment of what is due to the parties entitled thereto, according to their respective priorities.

And that for effectuating the purposes aforesaid, all proper and necessary accounts may be taken, directions given, and inquiries made.

Or, that such further or other order may be made in the premises, as shall seem meet.

And your petitioner will ever pray, &c.

Note.—It is intended to serve this petition on the said C. D.

(*q*) Date found, as in the inquisition.

(*r*) It is not necessary to register the judgment; 27 & 28 Vict. c. 112, s. 3.

(*s*) Amount of debt or damages.

(*t*) Amount of taxed costs.

(*u*) Date from which interest directed by the judgment or order to run, or otherwise date of the judgment or order.

(*v*) Date of the taxing master's certificate.

Section VI.—Execution by Attachment of Debts due to the Judgment Debtor (*a*).

1329.

Notice of motion or summons for order for examination of judgment debtor as to debts due or accruing due to him (*b*).

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the plaintiff [*or as may be*] that the above-named defendant C. D. may be ordered to attend before R. M., esquire, the chief clerk to his lordship the Master of the Rolls [*or as may be*], at the chambers of the said Judge situate at [*state where*], at such time or times as may be appointed by notice in writing for the purpose of being examined *vivâ voce* and on oath as to the debts due and owing and accruing due to him. And that upon such examination the said C. D. may be ordered to produce all books, accounts, and other documents in his possession, custody, or power in any way relating or containing any entry relating to such debts.

1330.

Notice to judgment debtor to attend and be examined (*c*).

Formal parts: see ante No. 21.

Take notice that you are hereby required in obedience to the order made in this action, and dated the —— day of ——, 187—, to attend before R. M., esquire, the chief clerk to his lordship the Master of the Rolls [*or as may be*], at the chambers of the said Judge situate at [*state where*], on ——day, the —— day of ——, 187—, at — of the clock in the ——noon, for the purpose of being examined *vivâ voce* and on oath as to the debts due and owing and accruing due to you. And further take notice that, in further obedience to the said order, you are hereby required to bring with you and to produce to the said chief clerk upon such examination, all books, accounts, and other documents in your possession, custody, or power in any way relating or containing any entry relating to such debts.

(*a*) For the purpose of satisfying a judgment for the recovery by or payment to any person of money, debts due and owing or accruing due to the judgment debtor from a third person, may be attached and ordered to be paid to the judgment creditor; R. S. C. Ord. XLV.

(*b*) Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the judgment debtor be orally examined, as to whether any and what debts are owing to him, before an officer of the Court, or such other person as the Court or Judge shall appoint; and the Court or Judge may make an order for the examination of such judgment debtor, and for the production of any books or documents; R. S. C. Ord. XLV. 1. The order must be served upon the judgment debtor together with a notice of the time fixed for taking the examination. For form of notice, see *post* No. 1330. As to the service of the order, see note (*g*) to No. 1264 *ante*.

(*c*) See note (*b*) to No. 1329 *ante*.

1331. Motion paper or summons for garnishee order nisi (*d*).

Formal parts: see post No. 1570, *or ante* No. 881.

on the part of the above-named plaintiff [*or as may be; the judgment creditor being the applicant*], that all debts owing or accruing from E. F., of [*address and description*], to the above-named defendant C. D. [*or as may be*], may be attached to answer the

(*d*) Where a judgment has been obtained for the recovery by or payment to any person of money, the Court or Judge may, upon the application of the judgment creditor, order that all debts owing or accruing from any third person (called the garnishee) to the judgment debtor, be attached to answer the judgment debt; R. S. C. Ord. XLV. 2. Under this rule, only debts can be attached; therefore unliquidated damages cannot be attached; *Johnson* v. *Diamond*, 11 Exch. 73; *Jones* v. *Thompson*, E. B. & E. 63; nor can salary be attached before it is earned and due; *Hall* v. *Prickett*, 3 Q. B. D. 215. But a debt due may be attached before it is payable, and an order made for payment of it when it becomes payable; *Tapp* v. *Jones*, L. R. 10 Q. B. 591; *Birch* v. *Anderton*, M. R. at Chambers, 11th December, 1875, Reg. Lib. A. 1822. S. C., M. R. at Chambers, 22 December, 1875, Reg. Lib. A. 2022. An equitable debt may be attached; *Wilson* v. *Dundas*, W. N. (1875) 232. Seamen's wages cannot be attached; 17 & 18 Vict. c. 104, s. 233; nor can workmen's wages; 33 & 34 Vict. c. 30. An application for an attachment may be made at any time after the judgment or order is entered; and either before or after such an oral examination of the debtor as is mentioned in note (*b*) to No. 1329 *ante*; R. S. C. Ord. XLV. 2. The application is *ex parte*; *Ibid.*; and must be supported by an affidavit; *Ibid.*; for form of affidavit, see *post* No. 1332. Either by the same order by which the debt is attached, or by any subsequent order, it may be ordered that the garnishee appear before the Court or a Judge, or an officer of the Court, as the Court or Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt; R. S. C. Ord. XLV. 2. For forms of order attaching the debt and ordering the garnishee to appear, see *Birch* v. *Anderton*, M. R. at Chambers, 11th December, 1875, Reg. Lib. A. 1822; *Gillott* v. *Kerr*, M. R. at Chambers, 5th May, 1876, Reg. Lib. A. 743; Seton, ed. 4, p. 311, No. 1; Chitty, Forms, p. 374. The attachment order must be served upon the garnishee, or notice thereof given to him; R. S. C. Ord. XLV. 3; as to such service, see note (*k*) to No. 1333 *post*; for form of affidavit of service of the order, see *ante* No. 1266. From the time of the service of the order for attachment upon, or of notice thereof to, the garnishee, the debt is bound in his hands, and the judgment creditor becomes a secured creditor, having a charge upon the debt attached for the amount of the judgment debt; *Emanuel* v. *Bridger*, L. R. 9 Q. B. 286; *Stevens* v. *Phelips*, L. R. 10 Ch. 417; *Lowe* v. *Blakemore*, L. R. 10 Q. B. 485. When an order is made calling upon the garnishee to appear and show cause why he should not pay the judgment creditor the amount due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt, and the garnishee does not upon due service or notice of such order appear, or if he appears, but neither pays into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, nor disputes the debt due or claimed to be due from him to the judgment debtor, the Court or Judge may, if such last mentioned debt be actually due, order execution to issue, and it may issue accordingly, without any previous writ or process to levy the amount due from the garnishee, or so

sum of £—— (*e*), which by a judgment [*Or*, order] of this Court made in this action and dated the —— day of ——, 187—, the said A. B. recovered against the said C. D., and also the sum of £—— (*f*), at which the costs mentioned in the said judgment [*Or*, order] have been taxed and allowed, and also interest at the rate of £4 per cent. per annum on the said sum of £—— (*e*) from the —— day of ——, 187— (*g*), and on the said sum of £—— (*f*), from the —— day of ——, 187— (*h*). And that the said E. F., and also the said C. D. (*hh*), may be ordered to attend before

much thereof as may be sufficient to satisfy the judgment debt; R. S. C. Ord. XLV. 4; but if the debt from the garnishee to the judgment debtor be not yet payable, the Court or Judge may order the garnishee to pay the amount of such debt, or so much thereof as may be sufficient to satisfy the judgment debt, to the judgment creditor when such debt becomes payable; *Tapp* v. *Jones*, L. R. 10 Q. B. 591; *Birch* v. *Anderton*, M. R. at Chambers, 22nd December, 1875, Reg. Lib. A. 2022. For form of order for payment of a debt due, see Chitty, Forms, 376; for form of order for payment of a debt when it becomes due, see *Birch* v. *Anderton*, M. R. at Chambers, 22nd December, 1875, Reg. Lib. A. 2022; Seton, ed. 4, p. 311, No. 2. If, however, the garnishee appears and disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined; R. S. C. Ord. XLV. 5. As to the trial of issues in an action, see *ante* No. 788—793 a; for forms of orders directing issues to be tried, see Seton, ed. 4, pp. 371, *et seq.* If the garnishee appears and suggests that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt; R. S. C. Ord. XLV. 6; for form of such an order, see Chitty, Forms, p. 376. In such a case, after hearing the allegations of such third person, and of any other person whom, by the same or any subsequent order, the Court or Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or may order any issue or question to be tried or determined, and may bar the claim of such third person, or may make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge, if any, of such third person, and as to costs, as the Court or Judge shall think just and reasonable; R. S. C. Ord. XLV. 7. In every case the costs of any application for an attachment of debt, and of any proceedings arising from, or incidental to, such application, are in the discretion of the Court or Judge; *Ibid.*, rule 10. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid is a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may afterwards be set aside, or the judgment reversed; *Ibid.*, rule 8.

(*e*) Amount of debt or damages.

(*f*) Amount of taxed costs.

(*g*) Date from which interest is by the judgment or order directed to run, and otherwise date of the judgment or order.

(*h*) Date of the taxing master's certificate.

(*hh*) The Master of the Rolls has refused to make the order for payment without notice to the judgment debtor.

R. M., esquire, the chief clerk to his lordship the Master of the Rolls [*or as may be*], at the chambers of the said Judge, situate at [*State where*], on ——day, the —— day of ——, 187—, at —— of the clock in the forenoon, to show cause why the said E. F. should not pay to the said A. B. the debt due from him to the said C. D., or so much thereof as may be sufficient to satisfy the said two several sums of £—— and £——, and interest as aforesaid.

1332. Affidavit in support (*j*).

Formal parts: see ante No. 693.

1. By a judgment [*Or*, By an order] of this Honourable Court made in this action and bearing date the —— day of ——, 187—, it was adjudged [*Or*, ordered] that I [*Or*, that the above-named plaintiff A. B.] should recover against the above-named defendant C. D., the sum of £—— and costs to be taxed. The said costs have been since taxed and allowed by C. S., esquire, one of the taxing masters of this Court, at the sum of £——.

2. The said judgment [*Or*, order] still remains unsatisfied to the extent of the said two several sums of £——(*e*) and £——(*f*), and of interest after the rate of £4 per cent. per annum on the said sum of £——(*e*) from the —— day of ——, 187—(*g*), the date of the said judgment, and on the said sum of £——(*f*) from the —— day of ——, 187—(*h*), the date of the certificate of the said taxing master. [*If any part of the judgment has been satisfied, this paragraph should be varied accordingly.*]

3. E. F., of [*address and description*], is indebted to the said C. D. in the sum of £—— or thereabouts.

4. The said E. F. is within the jurisdiction of this Court.

1333. Motion paper or summons for substituted service of the garnishee order nisi (*k*).

Formal parts: see post No. 1570, *or ante* No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to serve the garnishee order nisi made in this action and dated the —— day of ——, 187—, on E. F. therein named by [*Here describe the mode of service proposed; as in ante* No. 284].

1334. Affidavit in support.

[*Same as* No. 1265 *ante.*]

(*e*) Amount of debt or damages.

(*f*) Amount of taxed costs.

(*g*) Date from which interest is by the judgment or order directed to run, and otherwise date of the judgment or order.

(*h*) Date of the taxing master's certificate.

(*j*) This affidavit must be made by the judgment creditor or his solicitor, and must show that judgment has been recovered, that it is still unsatisfied, and to what amount, and that some other person is indebted to the judgment debtor, and is within the jurisdiction; R. S. C. Ord. XLV. 2.

(*k*) The order may be served upon, or notice thereof may be given to the garnishee in such manner as the Court or Judge shall direct; R. S. C. Ord. XLV. 3; in the absence of any direction it ought to be served personally in the manner described in note (*g*) to No. 1264 *ante*.

Section VII.—Execution by means of an Order charging the Judgment Debt on the Debtor's Interest in Stocks, Shares or Securities (*a*).

1335.

Petition for charging order *nisi* (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of an Act passed in the session held in the 1st and 2nd years of the reign of Her present Majesty, chapter 110, and of an Act passed in the session held in the 3rd and 4th years of the reign of Her present Majesty, chapter 84.

And in the matter of C. D., of [*address and description*].

To Her Majesty's High Court of Justice.

The humble petition of A. B., of [*address and description*].

Showeth as follows:

1. [*State the judgment or order for the payment of money, as in paragraph* 1 *of* No. 1328 *ante.*)

(*a*) Where the person against whom any judgment or order for the recovery or payment of money has been obtained has any interest whether in possession, remainder, or reversion, and whether vested or contingent in any government stocks, funds, or annuities, or in any stock or shares of any public company in England (whether incorporated or not), standing in his own name, or in the name of any person in trust for him, or in the name of the Paymaster-General, or any interest in the dividends, interest, or annual produce of any such stocks, funds, shares, or annuities, the Court or a Judge may order the interest of the judgment debtor therein to stand charged with the payment of the amount for which judgment is recovered, and interest thereon. The effect of such an order is to entitle the judgment creditor to all such remedies as he would have been entitled to, if the charge had been made in his favour by the judgment debtor; but no proceedings can be taken to have the benefit of the charge until after the expiration of six calendar months from the date of the order; 1 & 2 Vict. c. 110, ss. 14, 15; 3 & 4 Vict. c. 82, s. 1; R. S. C. Ord. XLVI. A charging order cannot be made except in respect of an ascertained sum; *Widgery* v. *Tepper*, *Hall* v. *Tepper*, 6 Ch. D. 364; reversing S. C. *coram* Malins, V.-C., and overruling *Burns* v. *Irving*, 3 Ch. D. 291. Where the defendant was ordered to pay the amount recovered in three months' time, it was held, nevertheless, that the plaintiff was immediately entitled to a charging order; *Bagnall* v. *Carlton*, 6 Ch. D. 130. A judgment recovered against a married woman cannot be enforced by means of an order charging the income not yet accrued due of a fund the income of which is settled to the woman's separate use without power of anticipation; *Stanley* v. *Stanley*, 7 Ch. D. 589.

(*b*) The application for a charging order is, in the first instance, *ex parte*; 1 & 2 Vict. c. 110, s. 15; and may be made by petition or summons; Dan. Pr. 901. It must be supported by an affidavit; see No. 1337 *post*; and, where the fund sought to be charged is in Court, the Paymaster-General's certificate of fund must be produced. Under the old practice, where it was desired to give effect to a judgment obtained in a Court of Law, as a charge upon a fund in Court in Chancery, it was necessary to obtain a charging order from the Court of Law, and then to apply to the Court of Chancery for a charging

2. The said two several sums of £—— (*c*) and £—— (*e*), together with interest at the rate of £4 per cent. per annum on the said sum of £—— (*c*) from the —— day of ——, 187— (*d*), and on the said sum of £—— (*e*) from the —— day of ——, 187— (*f*), still remain due and owing to your petitioner upon and by virtue of the said judgment [*Or*, order]. [*If any part of the amount due upon the judgment has been satisfied, this paragraph should be altered accordingly.*]

3. [*State the title of the judgment debtor to the stocks, &c., sought to be charged; as thus:*]

There is now standing in the books of the Governor and Company of the Bank of England, in the name of the said C. D. in his own right [*Or*, in the name of E. F., of [*address and description*], in trust for the said C. D.] a sum of £1,000 Reduced £3 per cent. annuities. *Or*,

order; *Miles* v. *Presland*, 4 My. & Cr. 431; 2 Beav. 300; *Hulkes* v. *Day*, 10 Sim. 41; 4 Jur. 1125; but under R. S. C. Ord. XLVI. 1, a person who has obtained a judgment in any division of the Court may apply to the Chancery division for an order charging a fund in Court with the amount of the judgment, and restraining any dealing therewith; *Hopewell* v. *Barnes*, 1 Ch. D. 630. The order is in the first instance an order to show cause only; 1 & 2 Vict. c. 110, s. 15; for forms of order, see Seton, ed. 4, pp. 305—307. After the order is made, and until it is made absolute or discharged, no disposition of the judgment debtor will be valid or effectual against the judgment creditor; 1 & 2 Vict. c. 110, s. 15. Where the stocks, &c., charged are not in Court, the order should restrain the Bank, in the case of Government securities, or the public company, in the stocks or shares whereof the debtor is interested, from permitting any transfer thereof until the order is made absolute or discharged; 1 & 2 Vict. c. 110, s. 15. The order should be served upon the Chief Accountant of the Bank of England, or upon the authorised agent of the company; and if, after such service, a transfer of the stocks, &c., is permitted, the corporation or persons permitting the transfer will be liable to the judgment creditor for the value or amount of the property charged and transferred, or such part thereof as may be sufficient to satisfy the judgment debt; 1 & 2 Vict. c. 110, s. 15. Where the stocks, &c., charged are in Court, the order should restrain any dealing therewith without notice to the judgment creditor, and should be lodged at the Chancery Pay Office; Dan. Pr. 901. The order should also be served on the judgment debtor within the time mentioned in the order. If the judgment debtor does not, within the time mentioned in the order *nisi*, show good cause against the order, the order will be made absolute; or the Court or a Judge may discharge or vary the order; 1 & 2 Vict. c. 110, s. 15. If the judgment debtor does not appear, the service of the order on him must be proved; for form of affidavit of service, see *ante* No. 1266. For form of order absolute, see Seton, ed. 4, p. 305, No. 2; for form of order discharging the order *nisi*, see *Ibid.*, p. 306, No. 5.

(*c*) Amount of debt or damages recovered.

(*d*) Date from which interest is by the judgment or order to run; otherwise the date of the judgment or order.

(*e*) Amount of taxed costs.

(*f*) Date of taxing master's certificate.

There are now standing in the books of the Universal Life Assurance Society, in the name of the said C. D. in his own right [*Or*, in the name of E. F., of [*address and description*] in trust for the said C. D.] eighteen shares in the said Universal Life Assurance Society, which is a public company in England. *Or*,

By an order made in a certain action of G. *v.* H., (187—. G. No. ——), depending in this Court and dated the —— day of ——, 187—, it was ordered that the sum of £1,000 Consolidated £3 per cent. annuities, part of £10,000 like annuities in Court to the credit of the said action, G. *v.* H. 187—. G. No. —— The account of, &c., should be transferred to the said C. D.

Your petitioner therefore humbly prays that the said sum of £1,000 Reduced £3 per centum annuities [*Or*, the said eighteen shares in the Universal Life Assurance Society; *Or*, the said £1,000 Consolidated £3 per centum annuities] may stand charged with the payment to your petitioner of the said two several sums of £—— (*c*) and £—— (*e*) and of interest at the rate of £4 per cent. per annum on the said sum of £—— (*c*) from the —— day of ——, 187— (*d*), and on the said sum of £—— (*e*) from the —— day of ——, 187— (*f*), until payment, unless the said C. D. shall within —— after service of the order to be made upon this petition [*Or*, shall on or before the —— day of ——, 187—] show good cause to the contrary.

[*If the stocks, &c., sought to be charged are not in Court, add:*] And that the Governor and Company of the Bank of England [*Or*, the said Universal Life Assurance Society] may be restrained from permitting a transfer of the said £1,000 Reduced £3 per cent. annuities [*Or*, of the said shares] in the meantime and until the order to be made on this petition shall be made absolute or be discharged.

[*If the stocks, &c., sought to be charged are in Court, add:*] And that no part of the said Consolidated £3 per cent. annuities may be sold, transferred, paid out, or otherwise dealt with, without notice to your petitioner, in the meantime and until the order to be made on this petition shall be made absolute or be discharged.

(*c*) Amount of debt or damages recovered.

(*d*) Date from which interest is by the judgment or order to run; otherwise the date of the judgment or order.

(*e*) Amount of taxed costs.

(*f*) Date of taxing master's certificate.

[*Conclude:*] Or, that such further or other order may be made in the premises as shall seem meet.

And your petitioner will ever pray, &c.

NOTE.—It is not intended to serve this petition on any person.

1336.

Summons for charging order *nisi* (*g*).

Title as in No. 1335 *ante*; *other formal parts as in* No. 881 *ante*. on the part of A. B., of [*address and description*], that the sum of £1,000 Reduced £3 per centum annuities standing in the books of the Governor and Company of the Bank of England [*Or*, the eighteen shares in the Universal Life Assurance Society, a public company in England, standing in the books of the said Universal Life Assurance Society], in the name of C. D., of [*address and description*], in his own right [*Or*, in the name of E. F., of [*address and description*], in trust for C. D., of [*address and description*]];

Or, that the £1,000 Consolidated £3 per cent. annuities, part of £10,000 like annuities in Court to the credit of the action, G. *v.* H., 187—. G. No. ——. The account of, &c., which, by an order of this Court made in the said action and dated the —— day of ——, 187—, were ordered to be transferred to C. D., of [*address and description*] ;

may stand charged with the payment to the applicant of the sum of £——, which by a judgment [*Or*, order] of this Court, made in a certain action wherein the applicant was plaintiff and the said C. D. and others were defendants, and dated the —— day of ——, 187—, the applicant recovered against the said C. D., together with certain costs as in the said judgment [*Or*, order] mentioned, and of the sum of £——, the amount of the said costs as taxed and allowed by C. S., esquire, one of the taxing masters of this Court, and of interest at the rate of £4 per cent. per annum on the said sum of £——(*h*), from the —— day of ——, 187—(*j*), and on the said sum of £——(*k*), from the —— day of ——, 187—(*l*), until payment [*Continue as in the prayer of* No. 1335 *ante, to the end, substituting* "application" *for* "petition" *and* "applicant" *for* "petitioner"].

1337.

Affidavit in support.

Formal parts: see ante No. 693.

1. [*State the judgment or order for the payment of money, as in paragraph* 1 *of* No. 1328 *ante.*] [2.

(*g*) See note (*b*) to No. 1335 *ante*.

(*h*) Amount of debt or damages recovered.

(*j*) Date from which interest is by the judgment or order directed to run; otherwise, the date of the judgment or order.

(*k*) Amount of taxed costs.

(*l*) Date of taxing master's certificate.

2. [*Show what amount is still due on the judgment or order, as in paragraph* 2 *of* No. 1335 *ante.*]

3. [*Show the title of the judgment debtor to the stocks, &c., sought to be charged, as in paragraph* 3 *of* No. 1335 *ante.*]

4. [*Show means of knowledge.*]

1338.

Motion paper or summons for substituted service of order *nisi* on judgment debtor.

[*Same as* No. 1264 *ante.*]

1339.

Affidavit in support.

[*Same as* No. 1265 *ante.*]

1340.

Affidavit of service of order *nisi* on judgment debtor.

[*Same as* No. 1266 *ante.*]

Section VIII.—The Writ of Possession.

1341.

Præcipe for writ of possession (*a*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Seal a writ of possession directed to the sheriff of —— to deliver possession to A. B. of [*Here describe the premises as in the judgment or order*].

Judgment dated —— day of ——.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing writ, as in* No. 92 *ante.*]

— – —

(*a*) See note (*a*) to No. 1277 *ante;* for form, see R. S. C. App. (E) 7.

1342. Writ of possession (*b*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the sheriff of —— (*c*), greeting:

Whereas lately in our High Court of Justice, by a judgment of the Chancery Division of the same Court, A. B. recovered [*Or*, C. D. was ordered to deliver to A. B.] possession of [*Here describe the premises, as in the judgment or order*], in your bailiwick: Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances. And in what manner you have executed this our writ make appear to us in our High Court of Justice immediately after the execution hereof, and have you there then this writ.

Witness [*Conclude as in* No. 1278 *ante*].

1343. Indorsement of name and address of party issuing writ (*d*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

(*b*) A writ of possession may issue upon a judgment for the recovery of, or for the delivery of the possession of, land; R. S. C. Ord. XLII. 3; Ord. XLVIII. Where the judgment is for the recovery of land, it would seem that execution may issue at once, and without any service of the judgment; see R. S. C. Ord. XLVIII. 1, which does not seem to incorporate the provisions of 15 & 16 Vict. c. 76, s. 185, as to the time after verdict at which judgment may be signed and execution issued. But where by the judgment some person therein named is directed to deliver possession of land to some other person, execution cannot be issued until after the filing of an affidavit showing due service of the judgment, and that it has not been obeyed; R. S. C. XLVIII. 2. As to service of the judgment, see *ante* note (*g*) to No. 1264; for form of affidavit of service, see *ante* No. 1266; for form of affidavit of default in obeying the judgment, see *post* No. 1344. As to the writ of possession, see Chitty's Arch. pp. 1045, *et seq.* For form of writ, see R. S. C. App. (F) No. 7. As to the issuing, &c., of the writ, see note (*b*) to No. 1278 *ante*; as to the execution of the writ, see Chitty's Arch. 1045, 1046. For form of application for order for sheriff to return the writ, see *ante* No. 1294, and note thereto. For forms of returns, see Chitty, Forms, 560, 561.

(*c*) As to the direction of the writ, see note (*f*) to No. 361, and No. 364 *ante*.

(*d*) See note (*m*) to No. 1279 *ante*.

1344.
Affidavit in support (*e*).

Formal parts: see ante No. 693.

1. [*Prove service of the order directing possession to be delivered: see ante* No. 1266.]

2. [*Prove that the judgment or order has not been obeyed; as thus:*] The defendant C. D., at the time of the service aforesaid of the said order, refused to pay obedience thereto, by delivering possession of the premises in the said order mentioned to the plaintiff, as thereby directed; and the said defendant C. D. still detains and keeps possession of the said premises.

3. [*Show means of knowledge.*]

Section IX.—The Writ of Delivery.

1345.
Præcipe for writ of delivery (*k*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Seal a writ of delivery directed to the sheriff of —— to make delivery to A. B. of the chattels specified in the judgment [*Or*, order] dated —— day of ——, 187—.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing the writ, as in* No. 92 *ante.*]

(*e*) This affidavit is only necessary where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, and he neglects or refuses to do so; R. S. C. Ord. XLVIII. 2.

(*k*) See note (*a*) to No. 1277 *ante;* for form, see R. S. C. App. (E) No. 8.

1346. Writ of delivery, directing a distress until the chattel returned (*l*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the sheriff of —— (*m*), greeting:

We command you, that without delay you cause the following chattels, that is to say [*Here enumerate the chattels specified in the judgment*], to be returned to A. B., which the said A. B. lately in our High Court of Justice recovered against C. D. [*Or*, C. D. was ordered to deliver to the said A. B.] in an action in the Chancery Division of our said Court. And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to us in our said High Court of Justice, immediately after the execution hereof, and have you there then this writ.

Witness [*Conclude as in* No. 1278 *ante*].

1347. Writ of delivery, or to levy the assessed value of the chattel (*l*).

[*Proceed as in* No. 1346 *ante, down to the words* "cannot be found in your bailiwick"; *and continue thus:*] of the goods and chattels of the said C. D. in your bailiwick you cause to be made £—— [*the assessed value of the chattels*], and in what manner you shall have executed this our writ make appear to us in our said High Court of Justice immediately after the execution hereof, and have you there then this writ.

Witness [*Conclude as in* No. 1278 *ante*].

(*l*) A writ of delivery may be issued upon a judgment for the recovery of any property, other than land or money; R. S. C. Ord. XLII. 4. Under the practice before the Supreme Court of Judicature Acts, a writ for the return of the chattel detained, without giving the defendant the option of retaining the the chattel upon paying the assessed value, could only issue by leave of the Court or a Judge; C. L. P. Act, 1854, s. 78; and such leave could only be given where, at the trial, the value of the chattel had been assessed; *Clutton* v. *Carrington*, 24 L. J. C. P. 78; under the new practice, such leave does not seem to be necessary; compare R. S. C. Ord. XLIX. with R. S. C. Ord. XLII. 4. For form of writ, see R. S. C. App. (F) No. 8. As to the issuing, &c., of the writ, see note (*b*) to No. 1278 *ante*. For form of application for order for the sheriff to return the writ, see *ante* No. 1294, and note thereto.

(*m*) As to the direction of the writ, see note (*f*) to No. 361, and No. 364 *ante*.

1348. Indorsement of name and address of party issuing the writ (*n*).

[*Same as* No. 1279 *or* No. 1280 *ante*.]

SECTION X.—THE WRIT OF SEQUESTRATION (*a*).

(1.) *Issuing the Writ.*

1349. *Præcipe* for writ of sequestration (*b*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Seal a writ of sequestration against C. D. for not [*Here describe the default*] at the suit of A. B., directed to —— (*c*).

Judgment [*Or*, Order], dated ——, 187—.

[*Name and address of solicitor or party issuing the writ, as in* No. 92 *ante*.]

(*n*) See note (*m*) to No. 1279 *ante*.

(*a*) A writ of sequestration may be issued on a judgment or order directing any person to pay money or costs in a limited time; Gen. Ord. Jan. 1870, rule 3; R. S. C. Ord. XLII. 1, 23; R. S. C. Ord. XLVII.; or on a judgment or order directing any person to pay money into Court; R. S. C. Ord. XLII. 2; R. S. C. Ord. XLVII.; or on a judgment or order for the recovery of property other than land or money; R. S. C. Ord. XLII. 4; or on a judgment or order requiring any person to do any act in a limited time; R. S. C. Ord. XLVII. No order for the writ to issue is necessary; *Spruni* v. *Pugh*, 7 Ch. D. 567.

(*b*) See note (*a*) to No. 1277 *ante*; for form of *præcipe*, see R. S. C. App. (E) No. 6.

(*c*) Here insert the names of the Commissioners; see note (*c*) to No. 1350 *post*.

1350. Writ of sequestration (*d*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To —— (*e*), greeting.

Whereas lately in the Chancery Division of our High Court of Justice in a certain action there depending, wherein A. B. is

(*d*) As to the writ of sequestration, see Dan. Pr. 912—923. As to the cases in which the writ may issue, see note (*a*) at p. 736 *supra*. No order for leave to issue the writ is necessary; R. S. C. Ord. XLVII.; *Spruut* v. *Pugh*, 7 Ch. D. 567; except in the cases mentioned in R. S. C. Ord. XLII. rules 7, 8, 18, 19; see note (*k*) at p. 693 *ante*; but the writ cannot be issued until after service of the judgment or order, and the expiration of the time limited for doing the act thereby directed; R. S. C. Ord. XLVII. As to the service of the judgment or order, see *ante* note (*g*) to No. 1264. The writ must be prepared by the solicitor for the party issuing it, and must be engrossed on parchment; Dan. Pr. 912, 913. For form of writ, see R. S. C. App. (F), No. 10. On issuing the writ, the judgment or order must be produced to the officer, and also an affidavit of service thereof, and of default in obedience thereto; R. S. C. Ord. XLII. 9; for form of affidavit of service, see *ante* No. 1266; for form of affidavit of disobedience, see *ante* No. 1267. As to the renewal of the writ, see *post* Nos. 1399 to 1401, and notes thereto. The writ of sequestration when issued has the same effect as a writ of sequestration in Chancery formerly had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were formerly dealt with by the Court of Chancery; R. S. C. Ord. XLVII. As to the execution of a writ of sequestration, see Dan. Pr. 913 to 923. As to the powers of the sequestrators in breaking open doors, boxes, &c., and removing property, see Dan. Pr. 915, 918. As to the effect of the sequestration upon the personal estate of the person against whom the writ is issued, see Dan. Pr. 914, 915. As to its effect upon his real estate, see Dan. Pr. 916, 917; as to requiring the tenants of his real estate to attorn, see Dan. Pr. 916, and *post* No. 1354 and note. As to selling the property of the person against whom the writ is issued, which passes by delivery, and applying the proceeds of sale in satisfaction of the judgment, and as to applying the profits of his other property for the same purpose, see Dan. Pr. 913, 915, 916, 917, and *post* No. 1358. As to the proceedings where any third person claims to be entitled to property seized by the sequestrators, see Dan. Pr. 919, 920; and *post* No. 1360. As to the return of the writ, see Dan. Pr. 913. As to the liability of the sequestrators to account, see Dan. Pr. 917, and *post* No. 1359. As to the dissolution of the sequestration, and the discharge of the sequestrators, see Dan. Pr. 920. As to the costs of a sequestration, see Dan. Pr. 922.

(*e*) The writ of sequestration must be directed to not less than four persons; see R. S. C. App. (F), No. 10. These persons are nominated by the party issuing the writ, and care should be taken that they are able to answer for

plaintiff, and C. D. and others are defendants [*Or*, in a certain matter there depending, intituled "In the matter of E. F.;" *or as the case may be*] by a judgment [*Or*, order] of our said Court made in the said action [*Or*, matter], and bearing date the —— day of ——, 187—, it was adjudged [*Or*, ordered] that the said C. D. should [*Here recite the judgment or order, so far as it directs the payment of money or other act*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give, to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [*Here state the act to be done, as in the judgment or order*], clear his contempt, and our said Court make other order to the contrary.

Witness [*Conclude as in* No. 1278 *ante*].

1351. Indorsement of name and address of party issuing writ (*f*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

(2.) *The Execution of the Writ.*

1352. Return *nulla bona* to a sequestration (*l*).

To Her Majesty's High Court of Justice.

By virtue of the within writ, we do certify that we have made diligent search and inquiry after the real estate, and goods, chattels, and personal estate, of the within-named C. D., but cannot find that he is possessed of any real or personal estate that we can sequestrate and take into our hands, as by the within writ we are commanded. Witness our hands the —— day of ——, 187—.

X. Y.
T. Z. } Sequestrators.

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what shall come to their hands in case they should be called upon to account; Dan. Pr. 912. It is not essential that they should be professional persons; *Ibid.*, note (*p*).

(*f*) See note (*m*) to No. 1279 *ante.*

(*l*) See Dan. Pr. 913, and note (*x*); as to the Court fee payable on the return, see note (*j*) at p. 706 *ante.*

1353. General notice by sequestrators.

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

To E. F., of, *&c.*, and to whom else it may concern.

Whereas the above-named C. D. formerly carried on business at, *&c.*, and resided at, *&c.*, and now has offices at, *&c.*

Now we, the undersigned (being the sequestrators named in the writ of sequestration hereinafter set forth), hereby give you, and each and every of you, notice that a writ of sequestration has been issued out of Her Majesty's High Court of Justice, in the words and figures following, that is to say : [*Here set out a verbatim copy of the writ*] ; and which said writ is endorsed as follows : [*Here set out a copy of the indorsement*].

And further take notice that we require from you, and each and every of you, an account of the messuages, lands, tenements, and real estate whatsoever of the said C. D. in your possession, tenure, and occupation ; and also an account of all his goods, chattels, and personal estate whatsoever, in your possession, custody, or power ; and also an account of all other the real and leasehold and other personal estate whatsoever of the said C. D. ; and that you, and every of you, desist from aiding and abetting the said C. D. in disposing of the same, or any part thereof respectively.

And take notice that we the undersigned require you, and each and every of you, to pay to us all rents, issues, profits and annual proceeds, interest, dividends and annuities, debts and all other sum or sums of money whatsoever now due and payable from you respectively to the said C. D., or which may hereafter grow or accrue due or become owing and payable from you respectively to the said C. D.

Dated —— day of ——, 187—.

X. Y.
T. Z.

Note.—All communications to be addressed to Messrs. L. & M., solicitors, of, *&c.*

1354.
Notice to tenant to attorn to sequestrators (*n*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

We, X. Y. and T. Z., the sequestrators acting under the sequestration issued in this action on the —— day of ——, 187—, against the property of the defendant C. D., hereby give you notice and require you to attorn and become tenant to us for [*Describe the property; as thus:*] all that farm called the Bourne, situate at ——, in the county of ——, and for such other part or parts of the real estate of the said C. D. as is or are in your occupation; and to pay to us your rent in arrear and growing rent for the said premises.

Dated this —— day of ——, 187—.

X. Y.
T. Z.

To G. H., of [*residence and addition*].

1355.
Attornment thereon.

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

I, G. H., of [*residence and addition*], attorn and become tenant to X. Y. and T. Z., the sequestrators acting under the sequestration issued in this action on the —— day of ——, 187—, against the property of the defendant C. D., for all that [*Describe the property; see description in last form*], with the appurtenances, as the same are now in my occupation: to hold the same at and under the same rent, and subject to the same covenants and conditions, as I now hold the same. And I have this day paid to the said X. Y. and T. Z. the sum of (one shilling) for and on account and in part payment of the said rent. Dated this —— day of ——, 187—.

Witness: G. H.
L. M., of [*residence and addition*].

(*n*) Upon entering upon the real estate of the person against whom the sequestration is issued, the sequestrators should serve the tenants with notice in writing to attorn and pay their arrears and growing rents to them; Dan. Pr. 916. The notice should be served either by delivering the same to the tenant personally, at the same time showing him the writ of sequestration, or by leaving the notice at his dwelling-house with some member of his family, together with a copy of the writ, at the same time showing the original writ to the person served; *Ibid.*, and note (*c*)

1356. Notice of motion for tenant to attorn (*o*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*] that G. H. of [*residence and addition*], may be ordered, within (eight) days after service, to attorn and become tenant for the [*Describe the property: see ante* No. 1354], and to pay his rent in arrear and growing rent for the same to X. Y. and T. Z., the sequestrators acting under the sequestration issued in this action on the —— day of ——, 187—, against the defendant C. D.

1357. Affidavit in support.

Formal parts: see ante No. 693.

1. [*Prove service of the notice to attorn (p): see ante* Nos. 28 *and* 1266.]

2. [*If the service was personal, prove production of the sequestration; as thus:*] At the time of the service aforesaid of the said notice, I showed to the said [*tenant's name*] the writ of sequestration in the said notice mentioned or referred to, and which said writ appeared to me to have been regularly issued out of, and to be under the seal of, this honourable Court.

[*Or, if the service was not personal, prove service of the sequestration; as thus:*] At the time of the service aforesaid of the said notice, I served the said [*tenant's name*] with the writ of sequestration therein mentioned or referred to, and which appeared to me to have been regularly issued out of, and to be under the seal of, this honourable Court, by delivering to, and leaving with, the said [*State whom*] a true copy of the said writ, and of the indorsement thereon; and I at the same time showed to the said [*State whom*] the said writ so under seal as aforesaid.

3. [*Prove service of the notice of motion to attorn: see post* No. 1573.]

1358. Motion paper, notice of motion or summons for leave to sell certain personal property sequestered (*q*).

Formal parts: see post No. 1570 *or* No. 1571, *or ante* No. 881.

on the part of X. Y. and T. Z., the sequestrators acting under the writ of sequestration issued in this action on the —— against the

(*o*) If the tenants refuse to attorn, a return should be obtained from the sequestrators of their names, and refusal to attorn, and a motion should then be made, on notice to the tenants, that they be ordered to attorn, and pay their rents to the sequestrators; Dan. Pr. 916.

(*p*) As to the mode in which service should be effected, see *ante* note (*n*) to No. 1354.

(*q*) See R. S. C. Ord. XLVII., and Dan. Pr. 913, 915, 916, 917. The application may be by motion or summons, and is usually upon notice; but where the person against whom the sequestration is issued cannot be served, the application may be *ex parte;* Dan. Pr. 916. For form of order on *ex parte* motion, see *Re Rush*, M. R. 11 Feb. 1870, Reg. Lib. B. 337; 18 W. R. 417.

above-named C. D., and on the part of the above-named A. B. [*Person at whose instance the sequestration was issued*]:

1. That the said X. Y. and T. Z., *&c.*, the sequestrators acting under the said writ of sequestration, or any three or two of them, may be at liberty to sell, or cause to be sold, the goods, chattels, and effects of the said C. D., to wit, divers packages, Nod., *&c.*, or other his goods, chattels, and effects, now stored at Messrs. T. & Co.'s, at their repository at, *&c.*; and also divers other his goods, chattels, and effects, now at his office situate at, *&c.*; and at the residence of R. H., situate at, *&c.*; and other goods, chattels, and effects, and personal estate and property of the said C. D. of a like nature now under the control of the said sequestrators.

2. That the said sequestrators may be at liberty to pay the money arising from such sales to the said A. B.

3. And that the said sequestrators, or any three or two of them, may be at liberty to remove all deeds, books, and papers or other unsaleable effects and property of the said C. D., or in his custody or control, or held on his behalf, as a solicitor for other persons from the offices of the said C. D., situate at, *&c.*, or elsewhere soever the same may have been deposited by or on behalf of the said C. D., to a convenient place under the control of the said sequestrators.

1359. Notice of motion for sequestrators to account (*r*).

Formal parts: see post No. 1571.

that X. Y., *&c.*, the sequestrators acting under the writ of sequestration issued in this action on the —— day of ——, 187—, against the defendant C. D., may be ordered to leave their accounts in the Chambers of the Master of the Rolls (*or*, the Vice-Chancellor ——), situate in Rolls' Yard, Chancery Lane, London [*or as may be*], on or before the —— day of ——, 187—, or within (eight) days after service, and at such other times as the said Judge shall appoint; and to pay the balances appearing due on their accounts, or such part thereof as the Chief Clerk shall certify as proper to be paid by them, into Court, to the credit of this action, within ten days after the Chief Clerk's certificate of the result of such accounts respectively shall become absolute, or at such other periods as the Judge shall direct.

(*r*) See Dan. Pr. 917.

1360. Notice of motion or summons for an examination *pro interesse suo* (*s*).

Formal parts: see post No. 1571 *or ante* No. 881.
on the part of G. H., of [*residence and addition*], that an inquiry may be made whether the said G. H. has any and what interest in the real and personal estate [*or as may be*] sequestered by X. Y. and T. Z., the sequestrators acting under the writ of sequestration issued in this action on the —— day of ——, 187—, against the defendant C. D., or in any and what part thereof.

(3.) *Dissolving the Sequestration.*

1361. Notice of motion or summons for dissolution of sequestration, and discharge of sequestrators (*t*).

Formal parts: see post No. 1571, *or ante* No. 881.
on the part of the defendant C. D.:

1. That the writ of sequestration issued against the defendant C. D., on the —— day of ——, 187—, for not obeying the judgment [*Or*, order], dated —— day of ——, 187—, may stand dissolved.

2. That the costs of the plaintiff, and the costs, charges and expenses of the sequestrators acting under the said writ, of and incidental to the said sequestration: including therein all usual and proper allowances to the said sequestrators in respect of their office: and their costs of this application, and of and incidental thereto, may be taxed by the Taxing Master as between solicitor and client, in case the parties differ about the same, and be respectively (paid and) retained by the said sequestrators in manner hereinafter mentioned.

3. That X. Y., T. Z., *&c.*, the sequestrators acting under the said writ, may be ordered to withdraw from possession of the real estate of the defendant C. D., situate at, *&c.*: being the property taken possession of by the said sequestrators under the said sequestration: and from the receipt of the rents and profits thereof, within ten days after service of the order to be made on this application.

4. That the said sequestrators may be ordered within the time aforesaid to give notice to the tenants of such withdrawal; and be allowed their costs thereof, as between solicitor and client, in their costs hereinbefore directed to be taxed and retained.

5. That the said sequestrators may be directed to pay the plaintiffs' said costs, and be at liberty to retain such costs, and their own costs, and costs, charges and expenses: when respectively

(*s*) Where any person claims to be entitled to any property seized by the sequestrators, either he, or the party issuing the writ, should apply by motion or summons on notice for an inquiry as to his interest; Dan. Pr. 919, 920, 921. The application should be supported by an affidavit of the facts; *Ibid.*

(*t*) See Dan. Pr. 923. For order in like case on summons, see *Rawlinson* v. *Stringer*, M. R. at Chrs., 11 Sept. 1868, Reg. Lib. B. 2507.

taxed or agreed as aforesaid: out of the moneys in their hands; and be allowed the same in their accounts, as payments properly made by them out of such moneys.

6. That the said sequestrators may be ordered to pay what shall be found due from them on the balance of their accounts to the defendant C. D., or as he may direct, within ten days from the date of the approval by the Judge of the Chief Clerk's certificate, or within such other period as the Judge shall direct. And that thereupon the said sequestrators may be released and discharged from all liability in respect of their said office.

Section XI.—The Writs of Fieri Facias de Bonis Ecclesiasticis and Sequestrari Facias de Bonis Eccleciasticis (*a*).

1362.

Præcipe for writ of *fieri facias de bonis ecclesiasticis* (*b*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Seal a writ of *fieri facias de bonis ecclesiasticis* directed to the Bishop [*Or, if the see is vacant*, to the Archbishop] of ——, to levy against C. D. the sum of £——.

Judgment [*Or*, Order] dated ——, 187—.
Taxing Master's certificate dated ——, 187—.
Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing the writ, as in* No. 92 *ante.*]

(*a*) Where, upon the return of any writ of *fieri facias*, or of any writ of *elegit*, it appears that the person against whom the writ was issued is a beneficed clerk, and has no goods or chattels nor any lay fee in the bailiwick of the sheriff to whom the writ was directed, the person to whom the money or costs mentioned in the writ is or are payable, may, immediately after such writ with the return shall have been filed as of record, sue out one or more writs of *fieri facias de bonis ecclesiasticis* or one or more writs of *sequestrari facias de bonis ecclesiasticis*; Cons. Ord. XXIX. 11; R. S. C. Ord. XLIII. 2. A writ of *sequestrari facias de bonis ecclesiasticis* may also be issued after a return by sequestrators, that the person against whom the writ of sequestration was issued is a beneficed clerk having no lay property; Dan. Pr. 927, and note (*m*); in this case an order for the writ to issue seems necessary; Dan. Pr. 913.

(*b*) See note (*a*) to No. 1277 *ante*; for form of *præcipe*, see R. S. C. App. (E), form 4.

1363.
Writ of *fi. fa. de bonis ecclesiasticis* directed to Bishop (*c*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith :

To the Right Reverend Father in God (John), by Divine permission Lord Bishop of ——, greeting :

We command you, that of the ecclesiastical goods of C. D., clerk in your diocese, you cause to be made £——, which lately before us in our High Court of Justice, in a certain action wherein A. B. is plaintiff and C. D. is defendant [*Or*, in a certain matter there depending, intituled "In the matter of E. F. ;" *or as the case may be*], by a judgment [*Or*, order] of our said Court bearing date the —— day of ——, was adjudged [*Or*, ordered] to be paid by the said C. D. to the said A. B., together with interest on the said sum of £——, at the rate of £—— per centum per annum, from the —— day of ——, and have that money, together with such interest as aforesaid, before us in our said Court immediately after the execution hereof, to be rendered to the said A. B., for that our sheriff of —— returned to us in our said Court on —— [*Or*, at a day now past], that the said C. D. had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said £—— and interest aforesaid or any part thereof, and that the said C. D. was a beneficed clerk (to wit) rector of the rectory [*Or*, vicar of the vicarage] and parish church of —— in the said sheriff's county, and within your diocese [*as in the return*], and in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof, and have you there then this writ.

Witness [*Conclude as in* No. 1278 *ante*].

(*c*) As to the writ of *fieri facias de bonis ecclesiasticis*, see Chitty's Arch. pp. 1283—1286. As to the cases in which the writ may issue, see Cons. Ord. XXIX. 11 ; note (*a*) at p. 744, *supra*. For form of writ, see R. S. C. App. (F), No. 4. Before the writ is issued, the *fi. fa.* or *elegit* upon which it is issued, and the return thereto must be filed ; Cons. Ord. XXIX. 11. The writ is issued like a common *fi. fa.* ; Chitty's Arch. 1283 ; see note (*b*) to No. 1278 *ante*. As to the renewal of the writ, see *post* Nos. 1399—1401 and notes thereto. The writ is delivered to the Registrar of the diocese. As to the execution of the writ, see Chitty's Arch. 1285. As to the powers of sequestrators appointed by the bishop or archbishop in pursuance of the writ, see 12 & 13 Vict. c. 67. The bishop or archbishop is in the same position as the sheriff, and may be ordered to return the writ ; Chitty's Arch. 1286 ; for form of application for order to return the writ, see No. 1294 *ante*. The bishop or archbishop is entitled to the same fees for the execution of the writ as a sheriff.

1363a. The like directed to the Archbishop (*d*).

[*Proceed as in* No. 1363 *ante, down to :* Defender of the Faith ; *and continue thus :*]

To the Right Reverend Father in God ——, by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting :

We command you, that of the ecclesiastical goods of C. D., clerk in the diocese of ——, which is within the province of Canterbury, as ordinary of that church, the episcopal see of —— now being vacant, you cause to be made [*Conclude as in* No. 1363 *ante*].

1364. Indorsement of name and address of the party issuing the writ (*e*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

1365. Indorsement of amount to be levied (*f*).

[*Same as* No. 1281 *ante.*]

1366. *Præcipe* for writ of *sequestrari facias de bonis ecclesiasticis* (*g*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Seal a writ of *sequestrari facias* directed to the Bishop [*Or, if the see is vacant,* to the Archbishop] of ——, against C. D. for [*Here describe the default ; as :*] not paying to A. B. the sum of £——.

Judgment [*Or,* Order] dated ——, 187—.
Taxing Master's certificate dated ——, 187—.
Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing the writ, as in* No. 92 *ante.*]

(*d*) See note (*c*) to No. 1363 *ante.* For form, see R. S. C. App. (F), No. 5.

(*e*) See note (*m*) to No. 1279 *ante.*

(*f*) See note (*n*) to No. 1281 *ante.*

(*g*) See note (*a*) to No. 1277 *ante.* For form of *præcipe,* see R. S. C. App. (E), No. 5.

1368

Writ of *sequestrari facias de bonis ecclesiasticis* on judgment for the payment of money (*h*).

1875. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:

To the Right Reverend Father in God ——, by Divine permission Lord Bishop of —— [*Or*, to the Right Reverend Father in God ——, by Divine providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan], greeting:

Whereas by our writ we lately commanded our sheriff of ——, that [*Here recite the mandatory part of the fieri facias or elegit to the end*]. And whereupon our said sheriff of ——, on the —— day of ——, 187— [*Or*, at a day now past], returned to us in the Chancery Division of our said High Court of Justice, that the said C. D. was a beneficed clerk; that is to say, rector of the rectory [*Or*, vicar of the vicarage] and parish church of ——, in the county of ——, and within your diocese [*Or*, and within the diocese of ——, which is within the Province of Canterbury, as ordinary of that church, the episcopal see of —— now being vacant], and that the said C. D. had not any goods or chattels or any lay fee in his bailiwick [*Here follow the words of the sheriff's return*]. Therefore we command you that you enter into the said rectory [*Or*, vicarage] and parish church of ——, and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said £—— and interest aforesaid, of the rents, tithes, rent-charges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese [*Or*, in the diocese of —— aforesaid], of and belonging to the said rectory [*Or*, vicarage] and parish church of ——, and to the said C. D. as rector [*Or*, vicar] thereof, to be rendered to the said A. B., and what you shall do therein make appear to us in our said Court immediately after the execution hereof, and have you there then this writ.

Witness [*Conclude as in* No. 1278 *ante.*]

(*h*) As to the *sequestrari facias de bonis ecclesiasticis* for levying a sum of money, see Chitty's Arch. 1284—1286. As to the cases in which the writ may issue, see Cons. Ord. XXIX. 11; note (*a*) at p. 744 *supra*. For form of writ, see R. S. C. App. (F), No. 6. As to the issuing, delivery, execution and return of the writ, Chitty's Arch. 1286; and note (*c*) to No. 1363 *ante*.

1369. Indorsement of name and address of party issuing the writ (*j*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

1370. Indorsement of amount to be levied (*k*).

[*Same as* No. 1281 *ante; but after the words* "expenses of execution" *add the words* "and sequestration."]

1371. Motion paper for order for writ of *sequestrari facias de bonis ecclesiasticis* to issue on a judgment directing an act other than the payment of money to be done (*l*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*or as may be*] for a writ of *sequestrari facias de bonis ecclesiasticis* directed to the bishop [*Or*, archbishop] of ——, against C. D. for not [*Here describe the default*].

The writ of sequestration and the sequestrators' return accompany.

1372. *Præcipe* for writ (*m*).

[*Same as* No. 1366 *ante.*]

1373. Writ of *sequestrari facias de bonis ecclesiasticis* (*n*).

[*Proceed as in* No. 1368 *ante, down to* "greeting;" *and continue thus:*]

Whereas by our writ we lately gave unto [*Names of sequestrators*] or any three or two of them, full power and authority to enter upon, *&c.*, and thereby commanded them, any three or two of them, that they should, *&c.* [*recite the writ of sequestration*].

(*j*) See note (*m*) to No. 1279 *ante.*

(*k*) See note (*n*) to No. 1281 *ante.*

(*l*) Upon a judgment or order for payment of money, after a writ of *fi. fa.* or *elegit* has issued and been returned by the sheriff, a writ of *sequestrari facias de bonis ecclesiasticis* may issue as of course, and without any order; Cons. Ord. XXIX. 11. But where, upon a judgment or order directing a beneficed clerk to do any act other than the payment of money, a writ of sequestration has issued and has been returned by the sequestrators, an order for a writ of *sequestrari facias de bonis ecclesiasticis* seems necessary, or, at least, was so under the old practice; Dan. Pr. 913.

(*m*) See note (*g*) to No. 1366 *ante.*

(*n*) As to this writ, see Dan. Pr. 927. As to the cases in which it may issue, see *Ibid.*, and note (*a*) at p. 744 *supra.* As to the issuing and delivery of the writ, see note (*c*) to No. 1363 *ante.*

Whereupon the said [*Sequestrators' names*] returned to us in the Chancery Division of our said High Court of Justice, that the said C. D. was a beneficed clerk; that is to say, rector of the rectory [*Or,* vicar of the vicarage] and parish church of ——, in the county of ——, and within your diocese [*Or,* and within the diocese of ——, which is in the province of Canterbury, as ordinary of that church, the episcopal see of —— now being vacant], and that the said —— had not any messuages, lands, tenements, or real estate, the rents and profits whereof, nor any goods, chattels, or personal estate, which they could detain and sequester as commanded by our said writ [*as in return*]. Therefore we command you that you enter into the said rectory [*Or,* vicarage] and parish church of ——, and take and sequester the same into your possession, and also all the rents, tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese [*Or,* in the diocese of —— aforesaid] of the said C. D., until the said C. D. shall [*Here state the act to be done, as in the judgment or order*], clear his contempt, and our said Court make other order to the contrary.

Witness [*Conclude as in* No. 1278 *ante.*]

[*Same as* No. 1279 *or* No. 1280 *ante.*]

1374. Indorsement of name and address of party issuing the writ (*o*).

Section XII.—Attachment and Committal to Prison.

Part I.—The Writ of Attachment (*a*).

(1.) *Application for Leave to Issue the Writ.*

1375. Notice of motion for leave to issue writ of attachment (*b*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that he may be at liberty to issue a writ or writs of attachment against the defen-

(*o*) See note (*m*) to No. 1279 *ante.*

(*a*) A writ of attachment may be issued upon a judgment or order for the recovery of property other than land or money; R. S. C. Ord. XLII. 4; or, upon a judgment or order requiring any person to do any act other than the payment of money, or to abstain from doing anything; R. S. C. Ord. XLII. 5; or upon a judgment or order for the recovery by or payment to any person of money, or for the payment of money into Court, where such money is money which a trustee or person acting in a fiduciary character has been ordered to pay, or costs which a solicitor has been ordered to pay for misconduct as such, or money which a solicitor has been ordered to pay in his character of an officer of the Court; Gen. Ord. Jan. 1870, rule 7; R. S. C. Ord. XLII. 1, 2.

(*b*) No writ of attachment can be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment

dant C. D. [*or as may be*] for his contempt in not [*Here state the act required to be done or abstained from*], pursuant to the judgment [*Or*, order] dated the —— day of ——, 187—. And that the said C. D. may be ordered to pay to the applicant his costs of this application and also his costs of and incidental to the issuing and execution of the said writ or writs of attachment (*c*).

1376. Affidavit in support.

Formal parts: see ante No. 693.

1. [*Prove service of the judgment or order; see ante* No. 1266.]

2. [*Prove default in obeying the judgment or order: see ante* No. 1267 (*cc*).]

3. [*If the judgment or order is for the payment of money to any person or into Court, state the facts showing that the case comes within the exceptions mentioned in section 4 of The Debtors Act, 1869* (*d*).]

4. [*Prove service of the notice of motion; see post* No. 1573.]

5. [*Show means of knowledge.*]

1377. *Præcipe* for writ of attachment (*e*).

(2.) *Issuing the Writ.*

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Seal, in pursuance of order dated —— day of ——, an attachment directed to the sheriff of —— against C. D. for not [*Here specify the act required by the judgment or order to be performed*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing the writ, as in* No. 92 *ante.*]

is to be issued; R. S. C. Ord. XLIV. 2; *Re a Solicitor*, 1 Ch. D. 445; *Dallas* v. *Glyn*, 3 Ch. D. 190; *Baigent* v. *Baigent*, 1 Prob. D. 421. The notice of the application is sufficiently served upon the solicitors on the record of the party against whom the attachment is to be issued; *Browning* v. *Sabin*, 5 Ch. D. 511; *Richards* v. *Kitchen*, 25 W. R. 602. It is a matter for the discretion of the Judge whether he will give leave or not; *Ashworth* v. *Outram*, 5 Ch. D. 943. For order in like case, see Seton, ed. 4, 633, No. 2.

(*c*) A party who moves for leave to issue an attachment, should ask for the costs of it at the same time; if he does not so, he will have to pay the costs of a subsequent application for such costs; *Abud* v. *Riches*, 2 Ch. D. 528. The costs of an attachment are no longer fixed; *Abud* v. *Riches*, *ubi supra*. A party cannot be detained in prison for non-payment of the costs of his contempt; *Jackson* v. *Mawby*, 1 Ch. D. 86.

(*cc*) In case of a judgment or order for payment of money into Court, the default is proved by the Paymaster-General's certificate; Dan. Pr. 908; and see *post* Nos. 1968, 1969, and notes thereto.

(*d*) 32 & 33 Vict. c. 62.

(*e*) See note (*a*) to No. 1277 *ante*. For form of *præcipe*, see R. S. C.

1378.
Writ of attachment (*f*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. and others . Defendants.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:

To the sheriff of —— (*g*), greeting:

We command you to attach C. D. so as to have him before us in the Chancery Division of our High Court of Justice wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness [*Conclude as in* No. 1278 *ante.*]

App. (E), No. 9. According to the old practice, it was necessary to make two copies of the *precipe*, one of which was left with the entering clerk at the Registrar's office, and the other, having been marked by him as entered, was filed with the officer who issued the writ; Cons. Ord. I. 18; Dan. Pr. 389, 908.

(*f*) As to the cases in which this writ may be issued, see note (*a*) at p. 749, *supra*. It cannot be issued without leave; R. S. C. Ord. XLIV. 2; note (*b*) to No. 1375 *ante*. The writ must be prepared by the solicitor for the party issuing it, and must be engrossed on parchment; Dan. Pr. 388, and note (*y*). For form of writ, see R. S. C. App. (F), No. 9. On issuing the writ, the judgment or order upon which the writ is to issue, and the order giving leave to issue the writ must be produced to the officer; R. S. C. Ord. XLII. 9. As to the renewal of the writ, see *post* Nos. 1399—1401 and notes thereto. If the sheriff finds the contemnor, he must either arrest him and lodge him in prison, or, if he be already in prison, must lodge a detainer against him, and the person prosecuting the judgment or order may leave the contemnor in prison until he has cleared his contempt and obtained his discharge; Dan. Pr. 390—393, 999. A writ of attachment has the same effect as a writ of attachment issued out of the Court of Chancery formerly had; R. S. C. Ord. XLIV. 1; the judgment creditor, therefore, does not, by issuing a writ of attachment against his judgment debtor and arresting him thereunder, lose his right to proceed against the property of the debtor, as was formerly the case at law; *Roberts* v. *Ball*, 3 Sm. & G. 168; Dan. Pr. 903, 927. As to compelling the sheriff to return the writ, see *ante* No. 1294 and note thereto.

(*g*) As to the direction of the writ, see note (*f*) to No. 361, and No. 364 *ante*.

1379. Indorsement of name and address of party issuing writ (*h*).

[*Same as* No. 1279 *or* No. 1280 *ante.*]

(3.) *The Return of the Writ* (*j*).

1380. Return of attached and in prison (*k*).

I have attached the within-named C. D., whose body remains in Her Majesty's gaol for my county of ——, under my custody.
The answer of X. Y., esquire, sheriff.

1381. Return of *cepi corpus* (*l*).

I have attached the within-named C. D. as within I am commanded, whose body I have ready.
The answer of X. Y., esquire, sheriff.

1382. Return of *non est inventus* (*m*).

The within-named C. D. is not found in my bailiwick.
The answer of X. Y., esquire, sheriff.

(*h*) See note (*m*) to No. 1279 *ante.*

(*j*) The sheriff may be compelled to return a writ of attachment in like manner as any other writ; for form of motion paper for order for sheriff to return the writ, see *ante* No. 1294, and see the note thereto. As to the Court fee payable on the return, see note (*j*) at p. 706 *ante.*

(*k*) Where the sheriff makes this return, the contemnor may be left in prison until he has cleared his contempt and obtained his discharge; Dan. Pr. 909.

(*l*) This return should be made where the sheriff has arrested the defendant but has suffered him to go at large upon his giving bail. The attachment, however, is not a bailable process, and the sheriff will be liable for suffering the party arrested to go at large; Dan. Pr. 908, 909. Where the sheriff takes bail, the remedy against the contemnor is an order of the Court for the tipstaff (who now performs the duties formerly performed by the messenger, whose office is abolished by 37 & 38 Vict. c. 81, s. 4) to arrest him and bring him to the bar of the Court; Dan. Pr. 909; R. S. C. Ord. XLII. 23; see *post* Nos. 1383—1386.

(*m*) Where this return is made, the party prosecuting the judgment or order may either issue an attachment into another county, or he may obtain an order for the serjeant-at-arms to arrest the defendant; Gen. Ord. Jan. 1870, rule 6; R. S. C. XLII. 23; Dan. Pr. 395, 418, 910. For form of application for a serjeant-at-arms, see *post* No. 1387.

(4.) *Proceedings where the Sheriff returns Cepi Corpus* (*n*).

1383.
Motion paper for the tipstaff, where sheriff has taken bail (*o*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*or as may be*], that the tipstaff may apprehend the defendant C. D. [*or as may be*], and bring him to the bar: the Sheriff of —— having taken bail to an attachment for breach of the judgment [*Or*, order] dated the ——, 187—.

The Sheriff's return accompanies.

1384.
Warrant to tipstaff, on order to apprehend defendant (*p*).

Whereas by an order bearing date the —— day of ——, 187—, made in a certain action wherein A. B. is plaintiff and C. D. is defendant It was ordered that [*Set out mandatory part of order for the tipstaff*]: These are, therefore, in pursuance of the said order, to will and require you forthwith upon receipt hereof to make diligent search and inquiry after the said A. B.; and, wheresoever you shall find him, to arrest and apprehend him, and bring him to the bar of this Court, to answer his contempt in the said order mentioned: willing and requiring all and singular mayors, sheriffs, justices of the peace, bailiffs, constables, jailors, head-boroughs, and all other Her Majesty's officers and loving subjects, to be aiding in the execution of the premises, as they tender Her Majesty's service, and will answer the contrary at their peril; and this shall be your warrant.

Dated this —— day of ——, 187—.

——, C.

To Mr. X. Y., the tipstaff attending the Chancery Divison of the High Court of Justice, or his deputy.

(*n*) As to the proceedings of the party prosecuting the judgment or order where the sheriff returns *cepi corpus*, see note (*l*) to No. 1381 *ante*.

(*o*) The order is of course and is obtained on an *ex parte* motion; Dan. Pr. 413, 909. The application must be supported by the production of the sheriff's return; *Ibid.*, 413. If the office of tipstaff is vacant, the serjeant-at-arms should be ordered to apprehend the defendant; Dan. Pr. 413. The order when drawn up is delivered by the Registrar to the tipstaff; *Ibid.*, 413.

(*p*) The warrant is procured by the tipstaff himself; Dan. Pr. 413.

1385.
Return by the tipstaff (*q*).

In the High Court of Justice,
Chancery Division.
To Her Majesty's High Court of Justice.

Whereas by an order bearing date the —— day of ——, 187—, in an action wherein A. B. is plaintiff and C. D. is defendant, it was ordered that [*Recite the mandatory part of the order for the tipstaff*]:

These are humbly to certify that, in pursuance of the said order, I have taken the body of the aforesaid defendant C. D. as therein commanded [*Or, where defendant is not apprehended:* I have made diligent search after the said C. D., but he doth so abscond and secrete himself that he cannot be found to be apprehended]: this being the —— day of ——, 187—.

Y. X.,
Tipstaff attending the Chancery Division of the High Court of Justice.

1386.
Motion paper to turn defendant over to prison, on being brought up by the tipstaff (*r*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff: on the defendant C. D. being brought to the bar by the tipstaff, for breach of the judgment or order dated —— day of ——, 187—, that he be turned over to the Holloway Prison.

1387.
Motion paper for the Serjeant-at-Arms, on Sheriff's return *non est inventus* (*t*).

(5.) *Proceedings where the Sheriff returns Non Est Inventus* (*s*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*or as may be*], that the Serjeant-at-Arms may apprehend the defendant C. D. [*or as may be*], and bring him to the bar for breach of the judgment [*Or*,

(*q*) It is the duty of the tipstaff if he finds the defendant to arrest him, or, if he be already in prison, to lodge the order and warrant with the keeper as a detainer; Dan. Pr. 413, 414.

(*r*) If the tipstaff arrests the defendant, he brings him to the bar of the Court, whereupon the plaintiff must move that he be turned over to the Holloway Prison; this order is of course. Upon the order being made, the defendant is conveyed to prison, where he may be left until he clears his contempt. For form of order, see *Jones* v. *Adamson*, M. R. 21 Dec. 1863, Reg. Lib. A. 2282; Seton, ed. 3, 1262, No. 10; 1264, No. 15. If the tipstaff finds the defendant in prison and lodges a detainer, the defendant may be left there until he has cleared his contempt; a motion in such a case to turn the defendant over to the Holloway prison was formerly only necessary to ground a writ of sequestration; *Const* v. *Barr*, 2 S. & S. 452; 2 Russ. 161; and is not now necessary; R. S. C. Ord. XLVII.

(*s*) See note (*m*) to No. 1382 *ante*.

(*t*) On the sheriff returning *non est inventus*, the party prosecuting the

order] dated ——, 187—: the Sheriff having returned *non est inventus* to an attachment.

The judgment [*Or*, order] and Sheriff's return accompany.

1388. Motion paper to turn over contemnor, when brought up by the Serjeant-at-Arms (*u*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*or as may be*]: on the defendant C. D. [*or as may be*] being brought up by the Serjeant-at-Arms for breach of the judgment [*Or*, order] dated the ——, 187—: that he be turned over to the Holloway Prison.

(6.) *Obtaining Discharge from Custody* (*uu*).

1389. Notice of motion by an officer, suitor, or witness, to be discharged from custody, where protected from arrest (*v*).

Formal parts: see post No. 1571.

on the part of C. D., of [*residence and addition*], one of the solicitors of the Supreme Court [*or as may be*], that, on the ground of privilege, he may be discharged out of the custody of the Sheriff of Middlesex [*or as may be*] under a writ of attachment issued against him on the —— day of ——, 187—, for breach of the order dated the —— day of ——, 187—, in not [*Here describe the*

judgment or order is entitled to an order for the serjeant-at-arms; Gen. Ord. Jan. 1870, rule 6; R. S. C. Ord. XLII. 23. The application is *ex parte* by motion supported by the production of the attachment and the sheriff's return; Dan. Pr. 910. The Registrar will upon registration draw up the order and deliver it to the serjeant-at-arms or his deputy; Cons. Ord. XXX. 2; for form of order, see Seton, ed. 3, p. 1222, No. 5. The serjeant-at-arms then obtains the Lord Chancellor's warrant; see No. 1384 *ante*. If the serjeant-at-arms arrests the defendant he must bring him to the bar of the Court; Cons. Ord. XXX. 2; if he finds him in prison, he must lodge the order and warrant with the keeper as a detainer; Dan. Pr. 911. For form of return, see *ante* No. 1385. No order for a serjeant-at-arms may be discharged, nor the contempt thereupon, without a certificate under the hand of the serjeant-at-arms that his fees have been paid; and after such order has been drawn up and passed, no private or other agreement shall be made between the party prosecuting the contempt and the person standing in contempt or on their behalf for a compromise of the action or a discharge of the contempt unless such satisfaction be made, and a certificate thereof produced to the Court; Cons. Ord. XXX. 2.

(*u*) See note (*r*) to No. 1286 *ante*, which applies to the case of an arrest or detainer as well by the serjeant-at-arms as by the tipstaff; Dan. Pr. 911.

(*u u*) For form of application for discharge from custody where the process is irregular, see *post* No. 1407.

(*v*) As to the protection afforded to officers, suitors, and witnesses from arrest, see Dan. Pr. 935, 936. For orders in like case, see *Dodd* v. *Holbrook*, V.-C. W. 9 Oct. 1865, Reg. Lib. A. 2059; V.-C. S. 6 Dec. 1865, Reg. Lib. A. 2348; 11 Jur. N. S. 969; 12 *Ibid.*, 19; 14 W. R. 125.

default] : the said C. D. having been, at the time of his arrest under the said writ, on his way to attend a summons at, *&c.*, as solicitor on behalf of, *&c.* [*or as may be*].

And that A. B., the person on whose behalf the said writ was issued, and E. F., esquire, the said Sheriff, and G. H., his officer, may be ordered to pay to the said C. D. his costs occasioned by the execution of the said attachment, and of this application and consequent thereon.

1390.
Motion paper to obtain discharge from custody (*w*).

Formal parts : see post No. 1570.

To move on behalf of the defendant C. D. that he may be discharged out of the custody of the Keeper of the Holloway Prison [*or as may be*], as to his contempt in not [*Here specify the act required to be done*], pursuant to the judgment [*Or*, order] made in this action and dated —— day of ——, 187—; the said defendant having now [*State the act done*], pursuant to the said judgment [*Or*, order].

(*w*) If the person who is attached and imprisoned for not performing an act by a judgment or order required to be performed, afterwards performs such act, he is entitled to be discharged from custody; *Jackson* v. *Mawby*, 1 Ch. D. 86. A trustee or solicitor, who has been imprisoned for non-payment of a sum of money, is entitled to be discharged after he has been imprisoned for one year, and that without paying the money as directed by the judgment or order; the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4. When a person is entitled to be discharged from custody, he cannot be detained in prison until he has paid the costs of his contempt; *Jackson* v. *Mawby*, 1 Ch. D. 86. A prisoner who wishes to obtain his discharge must obtain an order for the purpose; Dan. Pr. 431; Seton. ed. 3, p. 1237; where the performance of the act required to be done is certified by some officer of the Court, as in the case of an order for payment of money into Court, or of an order to make and file an affidavit, the application is *ex parte* by motion or petition of course, and must be supported by the officer's certificate of the performance of the act; Seton, ed. 3, p. 1237; in other cases the application is by motion on notice to the party who issued the process, and, unless he consents, it should be supported by an affidavit proving compliance with the judgment or order, or, in cases within s. 4 of the Debtors Act, 1869, proving the lapse of a year since the imprisonment commenced; Seton, ed. 3, p. 1237. For order on *ex parte* motion on production of the certificate of an officer of the Court showing that the party has obeyed the judgment or order, see *Johns* v. *Treble*, M. R. 4 Nov. 1811, Reg. Lib. A. 1527; Seton, ed. 3, p. 1237, No. 17. Besides applying to be discharged from custody upon the grounds above mentioned, a party who has been arrested may apply to discharge the writ of attachment for irregularity, and for his discharge thereon; see *post* No. 1407. And such a party may also apply for his discharge at any time and on any ground; such application should be upon notice, and should be supported by an affidavit of the facts upon which it is grounded.

1391.
Petition of course for the like (*x*).

Formal parts: see post No. 1576.

The humble petition of the defendant C. D.

Showeth as follows:

1. By a judgment [*Or*, order] of this Court made in this action and dated the —— day of ——, 187—, it was adjudged [*Or*, ordered] that [*Here recite the mandatory part of the judgment or order*].

2. Your petitioner is now in the custody of the Keeper of the Holloway Prison [*or as may be*], under an attachment issued against him for a contempt incurred by him in not [*Here specify the act required to be done*] pursuant to the said judgment [*Or*, order].

3. Your petitioner has now [*State the act done*] pursuant to the said judgment [*Or*, order].

Your petitioner therefore humbly prays that he may be discharged out of the said custody as to his said contempt.

And your petitioner will ever pray, &c.

1392.
Notice of motion for discharge from custody (*y*).

Formal parts: see post No. 1571.

on the part of the defendant C. D., that he may be discharged out of the custody of the Keeper of the Holloway Prison [*or as may be*], as to his contempt in not [*Here specify the act required to be done or abstained from*], pursuant to the judgment [*Or*, order] made in this action and dated —— day of ——, 187—.

(*x*) See note (*w*) to No. 1390 *ante*. For order in like case, see *Abud* v. *Riches*, M. R. 28 April, 1876, Rolls Lib.; 2 Ch. D. 528.

(*y*) See note (*w*) to No. 1390 *ante*.

Part II.—Committal to Prison (*a*).

(1.) *For Breach of a Judgment or Order other than for the Payment of Money.*

1393. Notice of motion for committal to prison (*b*).

Formal parts : see post No. 1371.

on the part of the plaintiff, that the defendant C. D. may stand committed to the Holloway Prison for [*Here state the act or non-feasance which constitutes a breach of the judgment or order*], pursuant to the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—. And that the said defendant may be ordered to pay to the applicant his costs of and incidental to this application and the order to be made thereon (*c*).

(*a*) A person may be committed to prison for disobedience to a judgment or order requiring him to do any act other than the payment of money, or to abstain from doing anything ; R. S. C. Ord. XLII. 5. A person may also be committed to prison for a term not exceeding six weeks, or until payment of the sum due, for default in payment of any debt, or instalment of any debt, due from him in pursuance of any judgment or order ; provided it be proved to the satisfaction of the Court that the person making default either has, or since the date of the judgment or order has had, the means to pay the sum in respect whereof he has made default, and has refused or neglected, or refuses or neglects, to pay the same ; The Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.

(*b*) This form is proper to the case of a judgment or order for the performance of some act other than the payment of money ; for form of application for a committal under s. 5 of the Debtors Act, 1869, see *post* No. 1396. The application is by motion, of which notice must be served personally ; Dan. Pr. 1534, 1535 ; but see *Browning* v. *Sabin*, 5 Ch. D. 511 ; *Richards* v. *Kitchen*, 25 W. R. 602 ; *supra*, note (*b*) to No. 1375 ; an order for substituted service may be obtained ; Dan. Pr. 1535 ; for forms of application for order for substituted service, and of affidavit in support, see *ante* Nos. 1264, 1265. The application to commit should be supported by evidence proving the service of the judgment or order, and the breach thereof ; for form, see *post* No. 1394. It is a matter for the discretion of the Judge whether he will commit or not ; *Ashworth* v. *Outram*, 5 Ch. D. 943. If the order of committal is made, it will be drawn up by the Registrar, and when passed and entered must be delivered to the tipstaff, who will thereupon procure the Lord Chancellor's warrant, and proceed to execute it ; Dan. Pr. 1535, 1536. For form of warrant, see *ante* No. 1384. The contemnor, if arrested by the tipstaff and lodged in prison, may be left there until he clears his contempt and obtains his discharge. As to the mode in which a prisoner obtains his discharge from custody, see note (*w*) to No. 1390 *ante* ; for forms of application for discharge, see Nos. 1389 to 1392 *ante*.

(*c*) See note (*c*) to No. 1375 *ante*.

1394. Affidavit in support.

Formal parts: see ante No. 693.
1. [*Prove service of the judgment or order: see ante* No. 1266.]
2. [*Prove breach of the judgment or order: see ante* No. 1267.]
3. [*Prove service of the notice of motion to commit: see post* No. 1573.]
4. [*Show means of knowledge.*]

1395. Obtaining discharge from custody (*d*).

[*Same as* Nos. 1389 *to* 1392 *ante.*]

(2.) *For the Breach of a Judgment or Order for the Payment of Money.*

1396. Notice of motion for committal order (*e*).

Formal parts: see post No. 1571.
on the part of the plaintiff [*or as may be*], that the above-named defendant C. D. [*or as may be*] may be ordered to pay to the applicant his costs of and incident to this application and the

(*d*) See note (*w*) to No. 1390 *ante*.

(*e*) See the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5; *supra*, note (*a*) at p. 758. The application is by motion, of which notice must be served upon the debtor personally, unless an order for substituted service is obtained; Gen. Ord. Jan. 1870, rule 10; Dan. Pr. 1534, 1535. For forms of application for order for substituted service, see *ante* Nos. 1264, 1265. The application must be supported by an affidavit as to the means of the debtor; see s. 5 of the Act; for form, see *post* No. 1397. On the hearing of the application, the Court may either grant or refuse it, or adjourn it, and give leave to adduce further evidence, or direct an inquiry as to the debtor's means, or direct the debtor or any other person who has given evidence to be examined before the Court; Gen. Ord. Jan. 1870, rules 11, 12. The Court may direct the amount to be paid by instalments; 32 & 33 Vict. c. 62, s. 5. It is within the discretion of the Court whether it will make the order for committal or not; *Ashworth* v. *Outram*, 5 Ch. D. 943; and it may make the imprisonment determinable on payment of the whole amount due and of costs, or on payment of any instalment and costs; Gen. Ord. Jan. 1870, rule 13. Where an order is made for payment by instalments, and the debtor, after his discharge from prison, makes default in paying any subsequent instalment, an application may be made against him for a writ of attachment as in case of disobedience to an order directing performance of some act other than the payment of money; Gen. Ord. Jan. 1870, rule 18. For form of order of committal determinable on payment of the whole amount and costs, see form A 1, in the Sched. to the Gen. Ord. of Jan. 1870. For form of order of committal determinable on payment of costs and an instalment, and for payment of the residue by instalments, see form A 2 in the same Sched. The order is executed by the sheriff; Debtors Act, 1869, s. 5; for that purpose an office copy of the order having an indorsement thereon by the Clerk of Records

order to be made hereon. And that for default in payment of the sum of £——, which, by the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—, the said A. B. recovered against the said C. D., together with certain costs as in the said judgment [*Or*, order] mentioned, and of the sum of £—— at which the said costs have been taxed and allowed, and of interest at the rate of £4 per cent. per annum on the said sum of £—— (*f*) from the —— day of ——, 187— (*g*), and on the said sum of £—— (*h*) from the —— day of ——, 187— (*j*), the said C. D. may be committed to prison for the term of six weeks from the date of his arrest, including the day of such date, unless he shall sooner pay the said two several sums of £—— and £—— and interest as aforesaid, and also the said costs of this application, and also the Sheriff's fees for the execution of the order to be made hereon. And that any sheriff or officer to whom an office copy of the order to be made hereon shall be delivered, after being directed to him by the Clerk of Record and Writs, may be ordered to take the said C. D. for the purpose aforesaid if he be found within his bailiwick.

1397.
Affidavit in support (*k*).

Formal parts: see ante No. 693.

1. [*Prove that the person against whom the application is made either has, or since the date of the judgment or order has had, the means of paying the money in respect of the payment whereof he has made default, and has refused or neglected, or refuses or neglects, to pay the same.*]

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and Writs of the direction of the sheriff to execute the same, see *ante*, note (*f*) to No. 361, and No. 364, must be delivered to such sheriff; and office copies of the order may be delivered concurrently to different sheriffs for execution in different counties; Gen. Ord. Jan. 1870, rule 15. The order is executed by the sheriff in like manner as a *ca. sa.*; if the debtor is arrested under it, he may be committed to the prison in which he would have been confined if arrested under a *ca. sa.*, and the sheriff must within two days after the arrest indorse upon the order the date of the arrest, and return the order to the party prosecuting the judgment or order, or his solicitor; Debtors Act, 1869, s. 5; Gen. Ord. Jan. 1870, rule 16. As to the discharge of the debtor from custody, see note (*l*) to No. 1398 *post*. An application for a committal order or an arrest thereunder, does not affect the right of the party making the application or obtaining the order to issue execution against the property of the debtor; Debtors Act, 1869, s. 5; Gen. Ord. Jan. 1870, rule 14.

(*f*) Amount of debt or damages.

(*g*) Date from which interest is by the judgment or order directed to run; otherwise, date of judgment or order.

(*h*) Amount of taxed costs.

(*j*) Date of Taxing Master's certificate.

(*k*) See the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5; see, also, Gen. Ord. Jan. 1870, rule 11.

1398. Certificate of payment of amount in respect of which committal order made (*l*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

I certify that C. D., now in the gaol of ——, upon an order of the High Court of Justice dated the —— day of ——, 187—, made in the above action, until payment of [*State amount, as in order of committal*], has paid the said sum together with the costs mentioned in the said order, and Sheriff's fees.

Dated —— day of ——, 187—.

X. Y.,
Solicitor for the said A. B.
[*Or,* A. B.,
Plaintiff in person.

Signed by the said A. B. in the presence of
Y. X.,
Solicitor [*Or,* J. P.].]

(*l*) Upon payment of the amount mentioned in the committal order, and of the costs of the application for the committal order, and of sheriff's fees, the person committed is entitled to a certificate of such payment, signed by the solicitor of the party prosecuting the judgment or order, or, if such party be acting in person, by the party himself, in which case it must be attested by a solicitor or Justice of the Peace; Gen. Ord. Jan. 1870, rule 17; and upon such certificate the debtor will be entitled to his discharge; Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5. For form of certificate, see form B in Sched. to Gen. Ord. of Jan. 1870.

Section XIII.—Renewal of Writs of Execution (*a*).

1399.
Motion paper or summons for leave to renew writ of execution (*b*).

Formal parts : see post No. 1570, *or ante* No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to renew the writ of *fieri facias* [*or as may be*], issued in this action, directed to the sheriff of ——, and bearing date the —— day of ——, 187—.

1400.
Præcipe for renewed writ (*c*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Seal renewed writ of [*Continue as in præcipe for original writ; see ante* Nos. 1277, 1312, 1341, 1345, 1349, 1362, 1366, 1377.]

1401.
Notice of renewal to the sheriff (*c*).

Formal parts : see ante No. 21.

Take notice that the writ of *fieri facias* [*or as may be*], issued in this action, directed to the sheriff of ——, and bearing date the —— day of ——, 187—, has been renewed for one year from the —— day of ——, 187—.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party renewing, as in* No. 21 *ante.*]

To the sheriff of ——.

(*a*) A writ of execution, if unexecuted, remains in force for one year only from its issue, unless renewed; but a writ of execution may, at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed will have effect, and be entitled to priority, according to the time of the original delivery thereof; R. S. C. Ord. XLII. 16. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with the seal above mentioned, showing the same to have been renewed, is sufficient evidence of its having been so renewed; *Ibid.*, rule 17.

(*b*) The leave of the Court or a Judge is now necessary for the renewal of a writ; R. S. C. Ord. XLII. 16; note (*a*), *supra*. The application for leave is *ex parte*.

(*c*) As to the different modes in which the writ may be renewed, see R. S. C. Ord. XLII. 16; note (*a*), *supra*. It is presumed that where the writ has not been delivered to the sheriff, it will be renewed by the writ itself being sealed; but that where the writ has been delivered to the sheriff, a notice will be sealed and delivered to the sheriff.

Section XIV.—Amendment of Writs of Execution (*d*).

1402.
Summons to amend writ of execution.

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty to amend the writ of *fieri facias* [*or as may be*],

Or, the indorsement on the writ of *fieri facias* [*or as may be*], issued in this action on the —— day of ——, 187—, directed to the sheriff of ——, by [*Here specify the amendment which it is desired to make*].

Section XV.—Registration of Writs of Execution (*e*).

1403.
Memorandum for the registry of a writ of execution, pursuant to 27 & 28 Vict. c. 112 (*f*).

NAME OF THE DEBTOR.		
Surname.	Christian name or names.	Writ of *elegit* [*or as may be*]: Filed for registration on the —— day of ——, 187—.
Brown.	Edward James.	
PLACE OF ABODE, AND TITLE, TRADE, OR PROFESSION.		
No. 800, Oxford Street, in the county of Middlesex, Linen-draper.		

In the High Court of Justice, Chancery Division.
John Jones, Plaintiff.

v.

Edward James Brown, Defendant.

The judgment [*Or*, order] on which the writ of *elegit* [*or as may be*] was issued, is dated the —— day of ——, 187—.
Debt, £——.
Costs, £——.
Thomas Styles, of [*place of business*]:
Solicitor for the plaintiff John Jones.

(*d*) As to the amendment of writs of execution, see Chitty's Arch. 642, 643. The 222nd section of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), applies to writs of execution; *Ibid.*, 642.

(*e*) See 27 & 28 Vict. c. 112, s. 3, referring to 23 & 24 Vict. c. 38, s. 2. No registration of a judgment is now necessary; 27 & 28 Vict. c. 112, s. 3.

(*f*) See note (*e*), *supra*, and Dan. Pr. 895. The memorandum must be on parchment; a form may be obtained at the office of the Senior Master of the Common Pleas Division. On registering a writ of execution a fee of 5*s.* is payable; 23 & 24 Vict. c. 38, s. 2. The fee for searching the register is 1*s.* for each name, payable by a stamp impressed upon a *præcipe*; Ord. as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522.

1404.
Acknowledgment of satisfaction of a registered writ of execution (*g*).

Satisfaction is acknowledged between A. B. and C. D. as to a writ of *elegit* [*or as may be*], issued on the —— day of ——, 187—, upon a judgment [*Or*, order] of the High Court of Justice, dated the —— day of ——, 187—, and made in an action wherein the said A. B. is plaintiff and the said C. D. is defendant, a memorandum of which writ was, on the —— day of ——, 187—, left with the senior master of the Common Pleas Division of the High Court of Justice to affect the estate of the said C. D.

And I, the said A. B. [*Continue as in* No. 278 *ante, to end.*]

1405.
Petition of course for entry of satisfaction of a registered writ of execution (*h*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff [*Or*, of the defendant C. D.].

Showeth as follows:

1. By a judgment [*Or*, order] made in this action, and dated the —— day of ——, 187—, it was adjudged [*Or*, ordered] that your petitioner [*Or*, the above-named plaintiff] should recover against the above-named defendant [*Or*, your petitioner] the sum of £——, together with certain costs as in the said judgment [*Or*, order] mentioned, and which costs were afterwards taxed and allowed at the sum of £——.

2. On the —— day of ——, 187—, a writ of *elegit* was duly issued upon the said judgment [*Or*, order] against the said C. D. [*Or*, your petitioner].

3. On the —— day of ——, 187—, a memorandum of the said writ of *elegit* was filed with the senior master of the Common Pleas Division of this honourable Court for entry, pursuant to the statutes in this behalf, so as to affect the estate of the said defendant [*Or*, of your petitioner]; who was described in such memorandum as [*Insert name, address, and trade, &c., as in memorandum*].

4. The purposes for which the said writ of *elegit* was registered

(*g*) Upon the filing of an acknowledgment in this form, the Senior Master of the Common Pleas Division may enter satisfaction as to the registered writ of execution; 23 & 24 Vict. c. 115, s. 2; see Dan. Pr. 895. The acknowledgment must be on parchment. As to the signature and attestation of the acknowledgment, and the fee payable on entering satisfaction, see note (*e*) to No. 278 *ante*.

(*h*) See Dan. Pr. 895. The practice of getting satisfaction entered under an order obtained on petition of course, is still frequently resorted to, notwithstanding the 23 & 24 Vict. c. 115, s. 2 (see note (*g*) to No. 1404 *ante*). The petition may be presented either by the execution creditor or the execution debtor; but in the latter case, the consent of the execution creditor or his solicitor must be subscribed to the petition; for form of consent, see *post* No. 1577.

as aforesaid have been satisfied, and your petitioner is desirous that the aforesaid entry thereof should be discharged.

Your petitioner therefore humbly prays that the proper officer may be at liberty to enter satisfaction in respect of the writ of *elegit* so registered as aforesaid in the books kept by him for that purpose.

And your petitioner will ever pray, &c.

1406. Notice of motion or summons for entry of satisfaction of registered writ of execution (*j*).

Formal parts : see post No. 1571, *or ante* No. 881.

on the part of the defendant C. D. [*or as may be*], that the senior master of the Common Pleas Division of this Court may be at liberty to enter satisfaction in respect of the writ of *elegit* issued in this action on the —— day of ——, 187—, upon the judgment [*Or*, order] made in this action, and dated the —— day of ——, 187— ; a memorandum of which writ was, on the —— day of ——, 187—, filed with the said master, to affect the estate of the said defendant who was therein described as [*Insert name, address, &c., as in memorandum*]. And that the plaintiff [*or as may be ; naming the party by whom the writ was registered*], may be ordered to pay the costs of this application.

Section XVI.—Discharging and Setting Aside Process of Execution (*k*).

1407. Notice of motion or summons to discharge process of execution (*l*).

Formal parts : see post No. 1571, *or ante* No. 881.

on the part of the defendant C. D. [*or as may be*], that the writ of *fieri facias* [*or as may be*], issued in this action on the —— day of ——, 187—, and directed to the sheriff of ——, may be dis-

(*j*) Before this application is made, the execution creditor should be requested to cause satisfaction to be entered, or to consent to a petition for the entry of satisfaction. The application should be supported by evidence that the judgment in respect whereof execution has been issued and registered is satisfied.

(*k*) If any process of execution upon a judgment or order be irregular, or ought not to have been issued, the Court or a Judge will, in general, set it aside, and, if goods or money have been levied under it, order them to be restored, or, if the party be in custody under it, order him to be discharged ; Chitty's Arch. p. 640 ; Dan. Pr. 434—436, 904, note (*o*) ; *Ibid.*, 909, and note (*j*) ; *Ibid.*, 910, and note (*r*). As to discharging or setting aside proceedings in general, see Chitty's Arch. 1470—1478. For forms of application to set aside a judgment by default, see *ante* Nos. 378, 386, 388, 539, 541. For form of application to discharge an order made on an interlocutory application, see *post* No. 1607.

(*l*) The application should be made within a reasonable time ; Chitty's Arch. 1472. And before the irregularity is waived ; *Ibid.*, 1473 ; Dan. Pr. 435—436. As to the terms upon which the order will be made, see Chitty's Arch. 641. The application should be supported by an affidavit verifying the grounds upon which the application is made ; Dan. Pr. 434.

charged for irregularity [*or as may be*]; on the ground that [*State what*]: and that

[*If property of the applicant has been sold under the writ* (*m*), *say:*] the plaintiff may be ordered to pay to the applicant the sum of £——, levied under the said writ;

[*If property of the applicant has been delivered to the party issuing the process, say:*] the plaintiff may be ordered to deliver to the applicant the [*Describe the property*], which was delivered to the plaintiff under the said writ;

[*If property of the applicant has been seized by sequestrators under a writ of sequestration, say:*] X. Y. and T. Z., the sequestrators acting under the said writ, may be ordered forthwith to withdraw from possession of [*Here describe the property*], being the property taken possession of by the said sequestrators under the said writ, and on or before the —— day of ——, 187—, or within —— days after service, to leave their accounts in the Chambers of the Master of the Rolls [*or as may be*], situate at [*State where*], and within —— days after the approval by the Judge of the Chief Clerk's certificate, to pay to the applicant what shall be found due from them on the balance of their accounts;

[*If the applicant has been arrested under the writ, say:*] the applicant may be discharged out of the custody of the Keeper of the Holloway Prison [*or as may be*], under the said writ;

And that the plaintiff may be ordered to pay to the applicant his costs of and occasioned by this application.

[*In case of a sequestration, add:*] and of taking the said account, and that the plaintiff may also be ordered to pay the costs, charges, and expenses of the sequestrators, and all allowances made to them in respect of their office.

(*m*) For form of notice to the sheriff not to part with the moneys levied, see Chitty, Forms, 848.

SECTION XVII.—ENFORCING THE JUDGMENT IN SCOTLAND OR IRELAND (*a*).

1408
Certificate where judgment for plaintiff (*b*).

I, ——, one of the Clerks of Records and Writs in the Chancery Division of Her Majesty's High Court of Justice in England, certify that [*Here state name, title, trade or profession, and usual or last known place of abode of plaintiff*] on the —— day of ——, 187—, obtained judgment against [*Here state name and title, trade or profession, and usual or last known place of abode of defendant*], before Her Majesty's High Court of Justice in England, for payment of the sum of £——, on account of [*State shortly nature of claim or ground of action, with the sum of costs, if any; and state whether the judgment was obtained after appearance made by the defendant, or after service (personal or otherwise) of the action on the defendant*].

Dated —— day of ——, 187—.

1409.
Certificate where judgment for defendant (*c*).

I [*&c.: as in* No. 1408 *ante*] certify that [*Here state name and title, trade or profession, and usual or last known place of abode of defendant*] on the —— day of ——, 187—, obtained judgment against [*Here state name and title, trade or profession, and usual or last known place of abode of plaintiff*], before her Majesty's High Court of Justice in England, for payment of the sum of £——, as costs of suit.

1410.
Minute of presentation (*d*).

Presented for registration in terms of the "Judgments Extension Act, 1868."

(*a*) Where judgment is obtained for any debt, damages, or costs, on production to the Master of the Court of Common Pleas at Dublin (now the Master of the Common Pleas Division of Her Majesty's High Court of Justice in Ireland; Sup. Cot. Jud. Act (Ireland) 1877 (40 & 41 Vict. c. 57), ss. 5, 34, 72), or at the office kept in Edinburgh for the registration of deeds, bonds, protests, and other writs registered in the books of council and session, of a certificate of such judgment purporting to be signed by the proper officer of the Court, such certificate will be registered in a register or book to be kept for that purpose, and thereupon the judgment may be enforced in Ireland as if it were a judgment of the Court of Common Pleas at Dublin (now the High Court of Justice in Ireland), or in Scotland as if it were a decreet of the Court of Session; 31 & 32 Vict. c. 54 (Judgments Extension Act, 1868), ss. 1, 2. Where it is desired to enforce in England a judgment of the High Court of Justice in Ireland, or a decreet of the Court of Session in Scotland, the judgment or decreet must be registered with the Senior Master of the Common Pleas Division of the High Court of Justice; 31 & 32 Vict. c. 54, ss. 1, 3; and the execution must be issued out of the Common Pleas Division; *Ibid.*, s. 4.

(*b*) See 31 & 32 Vict. c. 54, Sched. form 1.

(*c*) See 31 & 32 Vict. c. 54, Sched. form 2.

(*d*) See 31 & 32 Vict. c. 54, Sched. form 3. The minute is to be appended to the certificate, and signed by the solicitor for the party prosecuting the judgment.

Section XVIII.—Enforcing Judgments, Decrees, and Orders of Inferior Courts.

(1.) *Enforcing a Judgment of a County Court* (*a*).

1411. Motion paper or summons for *certiorari* to remove judgment of County Court for the purpose of issuing execution thereon (*a*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the County Courts Act, 1856.
And in the matter of a judgment recovered in the County Court of ——, holden at ——, in a plaint between A. B. plaintiff, and C. D. defendant (*b*).

[*If the application is made by motion, say:*] To move on behalf of

[*If the application is made by summons, say:*] Let all parties [*&c.: proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of

[*In either case proceed thus:*] the above-named A. B., of [*address and addition*] that a writ of *certiorari* may be ordered to issue to remove a plaint between A. B. and C. D. from the County Court of ——, holden at ——, together with the record of the judgment thereon obtained in the said Court, into this Court. And that the Clerks of Records and Writs may be ordered to receive and file the same.

(*a*) If a Judge of a superior Court be satisfied that a party, against whom a judgment for an amount exceeding £20, exclusive of costs, has been obtained in a County Court, has no goods or chattels which can be conveniently taken to satisfy such judgment, he may, if he think fit, and on such terms as to costs as he may think fit, order a writ of *certiorari* to issue to remove the judgment of the County Court into the superior Court, and when removed it has the same force and effect, and the same proceedings may be had thereon, as in case of a judgment of such superior Court; 19 & 20 Vict. c. 108 (County Courts Act, 1856), s. 49. The power given by this act may now be exercised by any Judge of the High Court of Justice, and the judgment may be removed into the High Court; Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 76. As a judgment of a County Court may be enforced by seizure and sale of the judgment debtor's goods; 9 & 10 Vict. c. 95, s. 94; County Courts Rules, 1875, Ord. XIX. 1; by the attachment of debts due to the judgment debtor; County Courts Rules, 1875, Ord. XXIV.; by writ of delivery; *Ibid.*, Ord. XIX. 29; and by attachment or committal to prison; The Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5; County Courts Rules, 1875, Ord. XIX. rules 6—27, 30, 31; it appears that the object of removing a judgment of a County Court into the High Court, is the enforcement of the judgment against the debtor's land by *elegit*, or against stock or shares wherein he is interested, or by means of a writ of sequestration. An application under this enactment is *ex parte;* and may be made either by motion or summons; where made by summons, the summons is an originating summons, for the practice as to which, see *ante* Nos. 865 *et seq.*, and notes thereto. For form of affidavit in support of the application, see *post* No. 1412.

(*b*) In the Queen's Bench, Common Pleas and Exchequer divisions, the

1412.
Affidavit in support.

Formal parts: see ante No. 693; *for title, see ante* No. 1411 (*c*).

1. On the —— day of ——, 187—, I [*Or*, the above-named A. B.], by a judgment of the County Court of ——, holden at ——, recovered against the above-named C. D. the sum of £——, for debt [*Or*, damages], and £—— for costs.

2. The said judgment still remains in force and unsatisfied.

3. The said C. D. has no goods or chattels which can be taken to satisfy the said judgment.

4. [*Show means of knowledge.*]

1413.
Præcipe for writ of *certiorari* (*d*).

Title as in No. 1411 *ante.*

Seal a writ of *certiorari*, directed to the Judge of the County Court of ——, holden at ——, pursuant to order dated the —— day of ——, 187—.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing writ; see ante* No. 92.]

1414.
Writ of *certiorari* (*e*).

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Judge of the County Court of ——, holden at ——, greeting.

We, willing for certain causes to be certified of a plaint levied in our Court before you against C. D. at the suit of A. B., command you that you send to us in the Chancery Division of our High Court of Justice, on the —— day of ——, 187— [*Or*, immediately], the plaint aforesaid, together with the record of the judgment thereon obtained in our said Court before you, with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness [*&c.: conclude as in* No. 93 *ante*].

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application is entitled only in the Court and not in any cause; Chitty's Arch. 1319; but in the Chancery Division it is usual to entitle the application in the matter of the act, and of the judgment or action in the inferior Court; see Seton, ed. 4, p. 335.

(*c*) See note (*b*) to No. 1411 *ante.*

(*d*) The *præcipe* must bear a 5*s.* stamp impressed upon it; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*e*) The writ should be engrossed on parchment. On sealing it, the order giving leave to issue it must be produced. As to the stamp payable on issuing it, see note (*d*) to No. 1413 *ante.* The writ should be served on the Judge of the County Court, or on the Registrar thereof, or upon a person acting as clerk at the office of the Registrar; Chitty's Arch. 1321.

1415.

Indorsement on writ (*e*).

[*Same as* No. 94 *or* No. 95 *ante.*]

1416.

Return to writ (*f*).

(1.) [*To be indorsed on writ.*]

The execution of this writ appears in the schedule hereunto annexed.

The answer of X. Y., esquire, Judge of the County Court of ——, holden at ——.

(2.) [*Schedule to be annexed to writ.*]

I, X. Y. esquire, the Judge of the County Court of ——, holden at ——, in the said county, to our Sovereign Lady the Queen, do most humbly certify that before the coming of this writ to me directed, and to this schedule annexed (to wit), on the —— day of ——, 187—, A. B. in the said writ named entered in the office of the Registrar of the said County Court at —— aforesaid, a plaint in writing against C. D. in the said writ also named for [*Here state the cause of action*]. And that afterwards (to wit), on the —— day of ——, 187—, a summons on the said plaint was issued under the seal of the said Court according to the form of the statutes in that behalf, whereby the said C. D. was summoned to appear at the said Court, to be holden at ——, in the county of —— aforesaid, on the —— day of ——, 187—, to answer the said A. B. to a claim, the particulars of which were thereunto annexed, and are as follows [*Copy the particulars*]. And that afterwards (to wit), on the —— day of ——, 187—, at the said Court, holden on that day, it was adjudged that the said A. B. should recover against the said C. D. the sum of £—— for debt [*Or*, damages], and £—— for costs, amounting together to £—— [*Where the judgment has been drawn up and filed of record, add:* and which said judgment is hereunto annexed.] And this is the tenor of the record and process of the said plaint and judgment, with all things touching the same as it remains before me.

(*e*) See Cons. Ord. III. 2, 5.

(*f*) The *certiorari* is obeyed by returning the record of the action formally made up; Chitty's Arch. 1313. If the Judge does not return the writ and record, an application should be made for an order upon him to do so; Chitty's Arch. 1321; the form, *ante* No. 1294, may easily be adapted to the case. When the judgment has been returned into the High Court, it has the same force and effect, and the same proceedings may be had thereon as in the case of a judgment of the High Court; 19 & 20 Vict. c. 108, s. 49; *ante*, note (*a*) to No. 1411.

(2.) *Enforcing a Judgment of the Mayor's Court (g).*

1417. *Præcipe* of judgment, rule or order obtained in Mayor's Court (*h*).

In the Mayor's Court.
Plaintiff, A. B., of [*address and description*].
Defendant, C. D., of [*address and description*].
Action entered —— day of ——, 18—.
Judgment by default [*or as may be*].
Debt [*Or*, Damages] in plaint, £——.
Amount for which judgment signed [*Or*, order made] £——.
Costs, £——.
Costs of removal, £——.
Judgment entered [*Or*, Order dated] —— day of ——, 187—.
Execution issued —— day of ——, 187—.
Dated —— day of ——, 187—.
[*Name and address of solicitor or party; see ante* No. 92.]

1418. Affidavit verifying judgment or order (*j*).

Title as in proceedings in the Mayor's Court; formal parts: see ante No. 693.

1. Judgment was duly signed [*Or*, An order was duly made] in the Court of the Mayor and Aldermen of the City of London, on the —— day of ——, 187—, in a certain action, wherein A. B. was plaintiff, and C. D. was defendant, for the sum of £—— debt [*Or*, damages], and £—— costs [*Or*, whereby it was ordered that [*Recite the order for payment*]].

2. The parchment [*Or*, paper] writing, now produced and shown to me, and marked A (*k*), is the record of the said action, and the judgment of the said Court [*Or*, is the order of the said

(*g*) Where final judgment has been obtained in the Mayor's Court, or where any rule or order has been made by that Court, whereby any sum of money or any costs shall be payable to any person, any writ of execution upon such judgment, rule, or order, shall be sealed by the sealer of writs of any of the superior Courts (now, of the High Court of Justice; 36 & 37 Vict. c. 66, s. 76), upon a *præcipe* of the same being lodged with him, together with an affidavit verifying the judgment or order, and that the same remains unreversed and unsatisfied, and immediately thereupon the writ of execution, and the judgment, rule, or order, will become and be of the same force, charge, and effect, as a writ of execution or judgment recovered in, or rule or order made by such superior Court, and all the reasonable costs and charges attendant upon such sealing, may be recovered in like manner as if the same were part of such judgment, rule, or order; The Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. 157), s. 48.

(*h*) See Brandon's Mayor's Court Practice, pp. 60, 61; and form No. XXX.

(*j*) *Ibid.*, and form No. XXIX.

(*k*) For form of memorandum of exhibit, see *ante* No. 723.

Court] of Mayor and Aldermen, and the said judgment [*Or*, order] still remains unreversed and unsatisfied.

3. The signature "——" set and subscribed to the said parchment [*Or*, paper] writing is of the proper handwriting of the proper officer of the said Court of Mayor and Aldermen.

4. [*Show means of knowledge.*]

(3.) *Enforcing a Judgment of the Court of Chancery of the County Palatine of Lancaster* (*l*).

1419. Motion paper to make decree or order of the Court of Chancery of the County Palatine of Lancaster, an order of the High Court (*m*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the Court of Chancery of Lancaster Act, 1850.

And in the matter of a suit in the Court of Chancery of the County Palatine of Lancaster, between A. B. plaintiff, and C. D. defendant.

To move on behalf of A. B., that the decree [*Or*, order] of the

(*l*) Although the jurisdiction of the Court of Common Pleas at Lancaster and of the Court of Pleas at Durham has been transferred to and vested in the High Court of Justice; Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16, sub-ss. 9, 10; the jurisdiction of the Court of Chancery of the county palatine of Lancaster is not affected by that act; and see 36 & 37 Vict. c. 66, s. 95. Whenever a plaintiff or defendant in any suit or proceeding in which a decree or order has been made by the Court of Chancery of the county palatine of Lancaster, resides, or withdraws his person or goods, out of the jurisdiction of that Court, and also whenever any decree or order of that Court cannot be fully enforced by reason of the non-residence of the party to be bound thereby within the jurisdiction of that Court, it is lawful for the High Court of Chancery (now, the High Court of Justice; 36 & 37 Vict. c. 66, s. 76), upon the application of any person entitled to the benefit of such decree or order, and upon production of a transcript thereof, or of such part thereof as cannot be enforced, under the signature of the Registrar of the Court, and of an affidavit that, by reason of such non-residence or removal as aforesaid, such decree or order, or part thereof, cannot be enforced, to make such decree or order, or so much thereof as cannot be enforced, a decree or order of the High Court of Justice, and thereupon such decree or order, or the part thereof, may be enforced against such of the parties bound by the same, as are within the jurisdiction of the High Court of Justice, and all proceedings may be had thereupon as if the decree or order had been originally made by the High Court of Justice, and the costs of such application may be recovered in like manner as if the same were part of such decree or order; Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), s. 15. By the Court of Chancery of Lancaster Act, 1854 (17 & 18 Vict. c. 82), s. 10, this provision is extended, and applied to decrees and orders made by the Court of Appeal from the Court of Chancery of Lancaster.

(*m*) The application is made by *ex parte* motion; Dan. Pr. 934, note (*u*).

[It

Court of Chancery of the County Palatine of Lancaster, dated the ——, 187—, may be made an order of this Court.

[*If as to part only, specify what part; as thus:*] as against the several persons who are named in the second column of the schedule hereunto annexed.

A transcript of (part of) the decree [*Or*, order], and an affidavit in support accompany.

1420. Affidavit in support (*n*).

Formal parts: see ante No. 693; *for title, see ante* No. 1419.

1. [*Show that the decree or order, or the part thereof sought to be enforced, cannot be enforced by the Court of Chancery of the County Palatine of Lancaster, by reason of the party, against whom the same is sought to be enforced, having withdrawn his person or goods out of, or of his non-residence within, the jurisdiction of that Court; and that he is bound by the decree or order.*]

2. [*Show means of knowledge.*]

(4.) *Enforcing a Judgment, Decree, or Order of the Court of the Vice-Warden of the Stannaries* (*o*).

1421. Motion paper or summons for leave to issue process on judgment in action on common law side of Stannaries Court (*p*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the Act, 18 & 19 Vict. c. 32.
And in the matter of a judgment recovered in the Court of the Vice-Warden of the Stannaries, in an action between A. B. plaintiff, and C. D. defendant.

[*If the application is made by motion, say:*] To move on behalf of

[*If the application is made by summons, say:*] Let all parties

It must be supported by the production of a transcript of the decree or order, or of the part thereof desired to be enforced, under the signature of the Registrar of the Court, and by an affidavit; see 13 & 14 Vict. c. 43, s. 15; note (*l*), *supra*. For form of affidavit, see *post* No. 1420. The application and the affidavit should be intituled in the matter of the Court of Chancery of Lancaster Act, 1850, and in the matter of the suit or proceeding; see *Re Liverpool and Dublin Steam Navigation Co., Limited*, V.-C. W., 4 Dec. 1866, Reg. Lib. B. 2461. For order in like case, see *Ibid.*

(*n*) As to the contents of the affidavit, see 13 & 14 Vict. c. 43, s. 15; note (*l*), *supra*.

(*o*) See 18 & 19 Vict. c. 32, ss. 9, 10; *post*, note (*p*) to No. 1421; and note (*q*) to No. 1422.

(*p*) By the 18 & 19 Vict. c. 32, s. 9, it is provided, that in actions commenced on the common law side of the Court of the Vice-Warden of the Stannaries, where judgment has been duly recovered in a cause whereof that

[*&c. : proceed as in* No. 865 *ante, to* noon] on the hearing of an application on the part of

[*In either case proceed thus :*] the above-named A. B. [*Or,* C. D.], of [*residence and addition*], that he may be at liberty, pursuant to the 18 & 19 Vict. c. 32, s. 9, to issue process out of this honourable Court, and to take other proceedings therein, for the recovery of the amount due on a judgment of the Court of the Vice-Warden of the Stannaries, dated the —— day of ——, 187—, and made in the above-mentioned action, and of the costs of this application (such costs to be taxed) in the same manner as if the said judgment were a judgment of this Court.

1422.

Motion paper or summons to make decree or order of equity side of Stannaries Court, an order of the High Court of Justice (*q*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the Act, 18 & 19 Vict. c. 32.
And in the matter of a decree or order of the Court of the Vice-Warden of the Stannaries, made in a cause between A. B. plaintiff, and C. D. defendant.

[*If the application is made by motion, say :*] To move on behalf of

[*If the application is made by summons, say :*] Let all parties [*&c. : proceed as in* No. 865 *ante, to* noon] on the hearing of an application on the part of

Court has cognizance, but which cannot be conveniently or effectually enforced by the ordinary process of that Court within the jurisdiction thereof, it shall be lawful for any one of the superior Courts of Common Law (now, the High Court of Justice ; 36 & 37 Vict. c. 66, s. 76), or any Judge thereof, upon application of the party entitled to the benefit of the judgment, and production of a certificate from the Registrar of the Court, under the seal of the Court, of the judgment so recovered, and a satisfactory affidavit of the ground of the application, to cause process to issue, and proceedings to be taken, for the recovery of the amount due on the judgment, including the costs of the certificate and of the application, in the same manner as upon a like judgment in an action commenced in the superior Court. It is not necessary that the record of the judgment should be engrossed or enrolled ; *Ibid.* The application may be made either to the Court or at Chambers, and is made *ex parte.* When made at Chambers it must be made by an originating summons, for the practice as to which, see *ante* Nos. 865 *et seq.*, and notes thereto. For form of affidavit in support, see *post* No. 1423.

(*q*) By the Act 18 & 19 Vict. c. 32, s. 10, it is provided, that where any decrees or orders made in causes on the equity side of the Court of the Vice-Warden of the Stannaries, whether for payment of money or otherwise, cannot be conveniently or effectually enforced by the ordinary process of that Court within the jurisdiction thereof, it shall be lawful for the High Court of Chancery (now, the High Court of Justice ; 36 & 37 Vict. c. 66, s. 76), or any Judge thereof, sitting in Court or at Chambers, upon the application of a

[*In either case, proceed thus:*] the above-named A. B. [*Or*, C. D.], of [*residence and addition*], that the decree [*Or*, order] of the Court of the Vice-Warden of the Stannaries, dated the —— day of ——, 187—, and made in the above-mentioned cause

[*If part only of the decree or order is sought to be enforced, say:*] that so much of the decree [*Or*, order] of the Court of the Vice-Warden of the Stannaries, dated the —— day of ——, 187—, and made in the above-mentioned cause as orders that [*Recite the part of the decree or order sought to be enforced*]

may be made an order of the High Court of Justice, pursuant to the 18 & 19 Vict. c. 32, s. 10. And that the costs of and consequent upon this application may be taxed.

1423.

Affidavit in support (*r*).

Title as in No. 1421 *or* No. 1422 *ante; other formal parts: as in* No. 693 *ante.*

1. On the —— day of ——, 187—, by a judgment duly recovered [*Or*, by a decree [*Or*, order] duly made] in an action [*Or*, cause] duly instituted on the common law [*Or*, equity] side of the Court of the Vice-Warden of the Stannaries, wherein the above-named A. B. was plaintiff, and the above-named C. D. was defendant, and whereof the said Court had cognizance, it was adjudged [*Or*, decreed; *Or*, ordered] that [*Recite the part of the judgment, decree, or order sought to be enforced*].

2. The said judgment [*Or*, decree; *Or*, order] cannot be conveniently or effectually enforced against the said C. D. [*or as may be*] by the ordinary process of the said Court, within the jurisdiction thereof, by reason of the said C. D. [*or as may be*], being resident at ——, out of the jurisdiction of the said Court [*Or*, of

party entitled to the benefit of the decree or order, and production of a certificate from the Registrar of the Court of the Vice-Warden, under the seal of the Court, of such decree or order, or such part thereof as cannot be enforced, and a satisfactory affidavit of the ground of the application, to make the said decree or order, or so much thereof as cannot be enforced, a decree or order of the High Court; and thereupon such decree or order, or such part thereof, may be enforced by such proceedings and writs as would or might have been taken or issued if the same had been originally made by the High Court, and the costs of and consequent upon such certificate and application may be recovered as if the same were part of the decree or order. The application may be made either to the Court or at Chambers, and is made *ex parte*. When made in Chambers it must be made by an originating summons, for the practice as to which, see *ante* Nos. 865 *et seq.*, and notes thereto. For form of affidavit in support, see *post* No. 1423. For order in like case, see *Popplewell* v. *Wright*, M. R. at Chrs. 12 June, 1857, Reg. Lib. B. 1257.

(*r*) As to the contents of this affidavit, see 18 & 19 Vict. c. 32, ss. 9, 10; note (*p*) to No. 1421, and note (*q*) to No. 1422 *ante*. The application must also be supported by a certificate of the Registrar of the Court, under the seal of the Court; see *Ibid.*

the said C. D., having withdrawn his person out of the jurisdiction of the said Court].

[*If the judgment, decree, or order is for payment of money or costs, add:*] and of his not having any property or effects situate within the jurisdiction of the said Court.

3. [*Show means of knowledge.*]

(5.) *Enforcing a Judgment of an Inferior Court of Record, under 1 & 2 Vict. c. 110, s. 21 (s).*

1424. Motion paper or summons to remove judgment or order of inferior Court into the High Court (*t*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the Act, 1 & 2 Vict. c. 110.
And in the matter of a judgment recovered in [*Or*, rule [*Or*, order] made by] the Court of —— in an action between A. B. plaintiff, and C. D. defendant (*u*).

[*If the application is made by motion, say:*] To move on behalf of

[*If the application is made by summons, say:*] Let all parties

(*s*) Where final judgment has been obtained in any action or suit in an inferior Court of record, in which, at the time of the passing of 1 & 2 Vict. c. 110, a barrister of not less than seven years' standing acted as Judge, assessor, or assistant in the trial of causes, or where any rule or order has been made by such an inferior Court of record as aforesaid, whereby any sum of money or any costs are payable to any person, the Judges of any of the superior Courts of record at Westminster (now, the High Court of Justice; see 36 & 37 Vict. c. 66, s. 76), or any Judge thereof at Chambers, may, upon the application of the person by whom the judgment has been recovered, or to whom any money or costs are payable under the rule or order, and upon production of the record of the judgment, or of the rule or order, under the seal of the inferior Court, and the signature of the proper officer thereof, order such judgment, rule, or order, to be removed into the High Court; and immediately thereupon such judgment, rule, or order, shall be of the same force, charge, and effect, as a judgment, rule, or order of the High Court, and all proceedings may be taken thereupon accordingly; and the costs of such application and removal may be recovered in like manner as if the same were part of the judgment, rule, or order; 1 & 2 Vict. c. 110, s. 22.

(*t*) The application is *ex parte*, and may be made either to the Court or at Chambers; 1 & 2 Vict. c. 110, s. 22. When made at Chambers, it is made by an originating summons, for the practice as to which, see *ante* Nos. 865 *et seq.*, and notes thereto. The application must be supported by production of the record of the judgment, or of the rule or order, under the seal of the inferior Court, and under the signature of the proper officer of the Court; 1 & 2 Vict. c. 110, s. 2; and also by an affidavit; for form, see *post* No. 1425.

(*u*) In the Queen's Bench, Common Pleas and Exchequer divisions, the application and affidavit are entitled in the Court but not in any cause; Chitty Forms, p. 760, note (*a*); but it is otherwise in the Chancery Division; see note (*b*) to No. 1411 *ante*.

[*&c. : proceed as in* No. 865 *ante, to* noon] on the hearing of an application on the part of

[*In either case proceed thus :*] the above named A. B. [*Or,* C. D.] of [*residence and description*], that the judgment [*Or,* rule ; *Or,* order] of the court of —— [*Insert style of court*] dated the —— day of —— 187—, and made in an action wherein A. B. is plaintiff, and C. D. is defendant, may be removed into the High Court of Justice pursuant to the statute in that behalf.

1425. Affidavit in support.

Title as in No. 1424 *ante* (*u*) ; *other formal parts, see ante* No. 693.

1. The Court of —— [*style of inferior Court*] is an inferior court of record, in which, at the time of the passing of the statute 1 & 2 Vict. c. 110, a barrister of not less than seven years' standing, acted as judge [*Or,* assessor ; *Or,* assistant] in the trial of causes.

2. On the —— day of —— 187—, I recovered a judgment of the said Court against C. D. for the sum of £—— debt [*Or,* damages], and £—— costs, in an action in which the said A. B. was plaintiff, and the said C. D. was defendant.

Or, By a rule [*Or,* order] of the said Court made on the —— day of —— 187—, in an action wherein the said A. B. was plaintiff, and the said C. D. was defendant, the said C. D. [*or as may be*] was ordered to pay to the said A. B. [*or, as may be*] the sum of £——, together with certain costs, as in the said rule [*Or,* order] mentioned, and which costs were afterwards duly taxed and allowed at the sum of £——.

3. The parchment [*Or,* paper] writing now produced and shown to me and marked A (*v*), is the record of the said judgment [*Or,* is the said rule [*Or,* order]]. The seal thereon is the seal of the said court of ——, and the signature "——" set and subscribed thereto, is of the proper handwriting of —— esquire, the Registrar [*or as may be*] and proper officer of the said Court.

4. The said judgment [*Or,* rule ; *Or,* order] still remains in full force, unreversed and unsatisfied.

5. [*State the ground for the removal of the judgment, as that defendant's property is situate out of the jurisdiction of the inferior court.*]

6. [*Show means of knowledge.*]

(*u*) See note (*u*) to No. 1424 *ante*.

(*v*) For form of memorandum of exhibit, see *ante* No. 723.

(6.) *Enforcing a Judgment of other Inferior Courts of Record* (*w*).

1426. Motion paper or summons for *certiorari* to remove judgment for the purpose of having execution (*x*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the Act, 19 Geo. 3, c. 70.
And in the matter of a judgment recovered in the Court of —— in an action between A. B., plaintiff, and C. D., defendant (*y*).

[*If the application is made by motion, say:*] To move on behalf of

[*If the application is by summons, say:*] Let all parties [*&c.*; *proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of

[*In either case proceed thus:*] the above-named A. B., of [*address and description*], that a writ of *certiorari* may be ordered to issue to remove an action between A. B. and C. D. in the Court of —— [*style of Court*], together with the record of the judgment thereupon obtained in the said Court, from the said Court into this Court, pursuant to the statute of the 19th of George the 3rd, chapter 70. And that the Clerks of Records and Writs may be ordered to receive and file the same.

1427. Affidavit in support.

Title as in No. 1426 *ante* (*y*); *other formal parts: see ante* No. 693.

1. On the —— day of ——, 187—, in an action depending in the Court of ——, wherein A. B. is plaintiff and C. D. is defendant, by a judgment of the said Court, the said A. B. recovered against

(*w*) Where judgment has been given in an inferior Court of record, it is lawful for any of the superior Courts at Westminster (now, for the High Court of Justice; 36 & 37 Vict. c. 66, s. 76), upon an affidavit of such judgment having been obtained, and of diligent search and inquiry having been made after the person of the defendant or his effects, and of execution having issued against his person or effects, and that his person or his effects are not to be found within the jurisdiction of the inferior Courts, to cause the record of the judgment to be removed into the High Court, and to issue writs of execution thereon against the person or effects of the defendant, in the same manner as upon a judgment in the High Court; 19 Geo. III. c. 70, s. 4. This enactment does not extend to a judgment in ejectment; *Doe* v. *Shipley*, 2 Dowl. 408; nor to a judgment for a defendant; *Batten* v. *Squires*, 4 Dowl. 53.

(*x*) The application is *ex parte*, and may be made either to the Court or a Judge at Chambers; Chitty's Arch. 1321. When made at Chambers it is made by an originating summons, for the practice as to which, see *ante* Nos. 865 *et seq.*, and notes thereto. For form of affidavit in support of the application, see *post* No. 1427.

(*y*) As to the title, see note (*b*) to No. 1411 *ante*.

the said C. D. the sum of £—— debt [*Or*, damages] and £—— costs.

2. On the —— day of ——, 187—, a warrant was issued out of the said Court directed to the bailiff thereof [*or as may be*] for the purpose of having execution of the said judgment.

3. [*Show what efforts were made to execute the warrant, showing that diligent search and inquiry were made after the person of the defendant or his effects, and that his person or effects were not to be found within the jurisdiction of the inferior Court.*]

4. I verily believe that the person and effects of the said C. D. are not to be found within the jurisdiction of the said Court of ——.

5. The said judgment remains still in force, unreversed and unsatisfied.

6. [*Show means of knowledge.*]

1428.

[*Same as* No. 1413 *ante, inserting the proper style of the Court.*] *Præcipe* for writ of *certiorari* (*z*).

1429.

[*Same as* No. 1414 *ante, inserting the proper style of the Court.*] Writ of *certiorari* (*a*).

1430.

[*Same as* No. 94 *or* No. 95 *ante.*] Indorsement on writ (*b*).

1431.

[*The formal parts of the return are the same as in* No. 1416 *ante. The body of the return should state the main proceedings in the inferior Court: see* No. 1416 *ante.*] Return to writ (*c*).

(*z*) As to the stamp to be impressed on this *præcipe*, see (note (*d*) to No. 1413 *ante*.

(*a*) See note (*e*) to No. 1414 *ante*. The writ should be served on the Judge of the Court.

(*b*) See Cons. Ord. III. 2, 5.

(*c*) See note (*f*) to No. 1416 *ante*. When the judgment has been returned into the High Court, writs of execution may be issued thereon, in the same manner as upon a judgment of the High Court; 19 Geo. III. c. 70, s. 4.

CHAPTER XIX.

APPEALS.

Section I.—Appeals to Her Majesty's Court of Appeal (*a*).

(*a*) An appeal lies to the Court of Appeal from any judgment or order of the High Court of Justice; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 19; but no appeal lies direct to the Court of Appeal from an order of the Judge in Chambers, unless by special leave of the Judge or of the Court of Appeal; *Ibid.* s. 50; the Court of Appeal will, however, grant such leave whenever the matter has been fully argued in Chambers before, and determined by, the Judge himself; *Murr* v. *Cooke*, 24 W. R. 756; *Thomas* v. *Elsom*, 6 Ch. D. 346; *Re Marsh*, W. N. (1877), 205; *Northampton Coal, &c., Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500; *Dickson* v. *Harrison*, 9 Ch. D. 243. The fact that the matter has been fully argued in Chambers before, and determined by, the Judge himself will be stated in the order, or certified by the Chief Clerk on application; *Murr* v. *Cooke*, 24 W. R. 756; but if there is any difficulty in obtaining the certificate, an application should be made to the Court of Appeal for leave to set down the appeal without any certificate; *Thomas* v. *Elsom*, 6 Ch. D. 346; for cases in which an appeal has been entertained direct from Chambers without any certificate, see *Re Marsh*, W. N. (1877), 205; *Northampton Coal, &c., Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500. An appeal lies from the decision of a Judge on the facts as well as on the law; *Sugden* v. *Lord St. Leonards*, 1 P. D. 154, 212; and see *per* Thesiger, L.J., in *Etty* v. *Wilson*, 3 Ex. D. 359. No appeal lies as to costs only, which, by law, are left to the discretion of the Court; Sup. Cot. Jud. Act, 1873, s. 49; *Harris* v. *Aaron*, 4 Ch. D. 749; *Re New Gas Co.*, 5 Ch. D. 703; *Re Hoskin's Trust*, 6 Ch. D. 281; *Ashworth* v. *Outram*, 5 Ch. D. 943; *Graham* v. *Campbell*, 7 Ch. D. 490; *Re Leigh, Rowcliffe* v. *Leigh*, 26 W. R. 729; and an order is not the less an order "as to costs only," because it goes on to direct how the costs are to be paid, as out of a fund, or in any other manner; *Re Chennell, Jones* v. *Chennell*, 8 Ch. D. 492; but an order directing payment of a trustee's costs, charges, and expenses, is not an "order as to costs only, which by law are left to the discretion of the Court," and therefore an appeal lies from such an order; *Jones* v. *Chennell, ubi supra*; so an appeal lies from an order declaring that the defendant had been guilty of a breach of an injunction, and ordering him to pay the costs of an application to commit, but making no other order; *Witt* v. *Corcoran*, 2 Ch. D. 69. No appeal lies from an order made by consent; 36 & 37 Vict. c. 66, s. 49; nor where the parties have submitted themselves to the jurisdiction of the Judge personally; *Ex parte Wilson*, L. R. 7 Ch. 45; and see *Bustros* v. *White*, 1 Q. B. D. 423, at p. 427; nor from a decision which, by any Act of Parliament, it is provided is to be final; The Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 20; see *Dodds* v. *Shepherd*, 1 Ex. D. 75, a decision upon the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 17; *Appleford* v. *Judkins*, 3 C. P. D. 489, and *Crush* v. *Turner*, 3 Ex. D. 303, decisions upon the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 45: nor where the amount in question is very trifling; *Re Cross*, L. R. 7 Ch. 221; whether an appeal lies from the decision of the Court on a special case stated by an arbitrator under the

1432.
Motion paper for leave to appeal from refusal of an *ex parte* application after expiration of time limited (*b*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff [*or as may be*], that, notwithstanding the time limited has expired, he may be at liberty on or

Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 5, *quære ;* see *Jones* v. *Victoria Dock Co.*, 2 Q. B. D. 314. In general, when the matter is for the discretion of the Judge, and the latter has exercised his discretion, no appeal will be entertained ; *Golding* v. *Wharton Salt Works Co.*, 1 Q. B. D. 374 ; *Metropolitan Board of Works* v. *New River Co.*, 2 Q. B. D. 67 ; *Watson* v. *Rodwell*, 3 Ch. D. 380 ; *Ashworth* v. *Outram*, 5 Ch. D. 943 ; *McDonald* v. *Foster*, 6 Ch. D. 193 ; but, in such cases, the Court of Appeal refuses to interfere, not from a want of jurisdiction, but in the exercise of its own discretion, and in extreme cases it will entertain the appeal ; *Davy* v. *Garrett*, 7 Ch. D. 473. Enrolment of the judgment or order has no effect in preventing an appeal ; *Hastie* v. *Hastie*, 2 Ch. D. 304. No interlocutory order, from which there has been no appeal, will operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just ; R. S. C. Ord. LVIII. 14. This rule prevents the right of appeal from being interfered with by the existence of an interlocutory order incidentally involving a decision of the point ; *per* Jessel, M. R., in *White* v. *Witt*, 5 Ch. D. 589 ; and see *per* James, L. J., *loc. cit.* All appeals to the Court of Appeal are by way of re-hearing ; R. S. C. Ord. LVIII. 2 ; that is, the appeal is a trial over again, and is not confined to the points mentioned in the notice of appeal ; *per* Jessel, M. R. in *Purnell* v. *Great Western Railway Co.*, 1 Q. B. D. 636, at p. 640 ; and in *Re Chennell, Jones* v. *Chennell*, 8 Ch. D. 492 at p. 505. The Court of Appeal has all the powers and duties as to amendment and otherwise of the Court of first instance, and also power to receive further evidence upon questions of fact, and power to give any judgment and make any order which ought to have been made on the original hearing, and to make such further or other order as the case may require, and that, notwithstanding that part only of the decision may be appealed from, and notwithstanding that the respondents may not have complained of the decision ; R. S. C. Ord. LVIII. 5 ; and for the purposes of and incidental to the hearing and determination of the appeal, and for the amendment, execution, and enforcement of any judgment or order made on appeal, the Court of Appeal has all the power, authority, and jurisdiction of the High Court of Justice ; 36 & 37 Vict. c. 66, s. 19. As to the powers of the Court of Appeal with respect to any case pending before it upon appeal, see *Hyde* v. *Warden*, 1 Exch. D. 309 ; *Purnell* v. *Great Western Railway Co.*, 1 Q. B. D. 636. The Court of Appeal may make any order as to the whole or any part of the costs of the appeal ; R. S. C. Ord. LVIII. 5 ; the general rule is, that the costs of the appeal follow the event, and a successful appellant is entitled to the costs of the appeal ; *Memorandum*, 1 Ch. D. 41 ; *Ex parte Masters*, 1 Ch. D. 113 ; *Friend* v. *London, Chatham, and Dover Railway Co.*, 2 Ex. D. 437 ; *The City of Berlin*, 2 P. D. 187 ; see also Dan. Pr. 1358, 1359. The judgment of the Court of Appeal, when given, becomes a judgment of the High Court, and the matter is remitted to that Court, the Court of Appeal ceasing to have any seisin of the case ; *per* Mellish, L. J., in *Justice* v. *The Mersey Steel Co.*, 1 C. P. D. 575. The Court of Appeal having once heard an appeal has no jurisdiction to rehear it ; *Flower* v. *Lloyd*, 6 Ch. D. 297 ; nor has that Court jurisdiction to hear an original petition ; *Dunraven Coal Co.*, 24 W. R. 37.

(*b*) Where an *ex parte* application has been refused by the Court below, an

before the —— day of ——, 187—, to apply by way of appeal for an order that [*Here state the order required*].

1433. Notice of motion for leave to appeal after expiration of time limited (*c*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that, notwithstanding the time limited has expired, he may be at liberty, on or before the —— day of ——, 187—, to serve and to set down for hearing a notice of motion by way of appeal from the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—.

Or, from so much of the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—, as directs [*State what*].

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application for a similar purpose may be made to the Court of Appeal, *ex parte*, within four days from the date of such refusal, or within such enlarged time as a Judge of the Court below, or of the Appeal Court, may allow; R. S. C. Ord. LVIII. 10. The application for leave to appeal notwithstanding the expiration of the time limited, must be made in the first instance to the Court, or a Judge of the Court, below; *Ibid.*, rule 17. As to the circumstances under which the Court will enlarge the time for appealing, see *International Financial Society* v. *City of Moscow Gas Co.*, 7 Ch. D. 241; *Craig* v. *Phillips*, 7 Ch. D. 249; *McAndrew* v. *Barker*, 7 Ch. D. 701, 705; *Re Mansel, Rhodes* v. *Jenkins*, 7 Ch. D. 711; and *post*, note (*c*) to No. 1433.

(*c*) An appeal from a judgment or order (other than an interlocutory order) made in an action must be brought within one year; R. S. C. Ord. LVIII. 15; an appeal from an interlocutory order made in an action must be brought within twenty-one days; *Ibid.*; and an appeal from any order or decision made or given in any matter, other than and not being an action, must be brought within twenty-one days; *Ibid.*, rule 9. Any doubt as to what judgments and orders are final, and what interlocutory, will be determined by the Court of Appeal; Supreme Court of Judicature Act. 1875 (38 & 39 Vict. c. 77), s. 12. In determining what orders are made on final, and what on interlocutory, applications, the substance of the case is looked at; where, therefore, on the hearing of an action on further consideration, and of a summons to vary the Chief Clerk's certificate, one order was made, dismissing the summons to vary, and granting an injunction and ordering payment of compensation in accordance with the Chief Clerk's certificate; held, that an appeal from this order must be brought within twenty-one days, the substantial part of the order appealed from being that dismissing the summons to vary, which was made on an interlocutory application; *Cummins* v. *Heron*, 4 Ch. D. 787; so, where, in a like case, an order was made, varying the Chief Clerk's certificate and dealing with the fund in Court accordingly, held, that the appeal must be brought within twenty-one days; *White* v. *Witt*, 5 Ch. D. 589. An order under R. S. C. Ord. XIV. 1, giving leave to sign judgment, is an interlocutory order, from which an appeal must be brought within twenty-one days; *Standard Discount Co.* v. *De la Grange*, 3 C. P. D. 67; so is an order on an interpleader issue, though it substantially decides the dispute between the parties; *McAndrew* v. *Barker*, 7 Ch. D. 701; but an order overruling or allowing a demurrer is not an interlocutory order; *Trowell* v. *Shenton*, 8 Ch. D. 318. Where a judge has made an order in Chambers, and, on a motion to discharge such order, has affirmed it in Court, an appeal lies to the Court of

1434. Notice of motion for leave to appeal, by a person not a party to the action (*d*).

Formal parts : see post No. 1571.
on the part of G. H., of [*residence and addition*], that he may be at liberty to serve [*Continue as in* No. 39 *ante, to end*].

Appeal within twenty-one days after the hearing in Court; *Dickson* v. *Harrison*, 9 Ch. D. 243. Where the appeal is from an affirmative order, the time for appealing runs only from the time when the order is signed, entered, or otherwise perfected; R. S. C. Ord. LVIII. 15; *Ex parte Garrard*, 5 Ch. D. 61; where the appeal is from the refusal of an application, the time runs from the date of the refusal; R. S. C. Ord. LVIII. 15; and that, although an order is made as to the costs of the application; *Swindell* v. *Birmingham Syndicate*, 3 Ch. D. 127; the dismissal of an action at the hearing is a "refusal of an application" within this rule; *International Financial Society* v. *City of Moscow Gas Co.*, 7 Ch. D. 241; where several claims are joined in one application, and an order is made thereon, granting some claims and refusing others, the time for the applicant to appeal from the part of the order refusing his claims, runs from the date of the refusal, and not from the date of the entering of the order; *Trulll* v. *Jackson*, 4 Ch. D. 7; *Berdan* v. *Birmingham Small Arms Co.*, 7 Ch. D. 24; but where the application includes only one claim, and an order is made giving the applicant something, but not all that he asked for, an appeal by the applicant from such an order is not an appeal from the refusal of an order, and the time for appealing runs from the date of the entering of the order; *Re Michell's Trusts*, 9 Ch. D. 5. The critical step, which must be taken within the time limited, is the service of the notice of motion of appeal; it is not enough to set down the motion for hearing, without serving the notice; *Ex parte Viney*, 4 Ch. D. 794; *Ex parte Saffery*, 5 Ch. D. 365. By special leave of the Court of Appeal, an appeal may be brought after the expiration of the time limited; R. S. C. Ord. LVIII. 15; such leave will not be given *ex parte*, but notice of motion for leave to appeal must be served; *Re Lawrence, Everett* v. *Lawrence*, 4 Ch. D. 139. The Court will not enlarge the time for appealing unless the appellants have been misled by their opponents, or by the officer of the Court, or unless there has been some unavoidable accident; *International Financial Society* v. *City of Moscow Gas Co.*, 7 Ch. D. 241; and see *McAndrew* v. *Barker*, 7 Ch. D. 701, 705, where it was held that the Court has no discretionary power to deprive a litigant of any advantage given to him by the General Rules, unless there has been conduct on his part raising an equity against him. The mere fact that after the expiration of the time limited for appealing, the Court of Appeal has, in a similar case, come to a different decision on a point of law, is not a sufficient reason, in the absence of special circumstances, to induce the Court to enlarge the time for appealing; *Craig* v. *Phillips*, 7 Ch. D. 249; nor is a mistake by counsel, or by the solicitor or his clerk, sufficient reason to induce the Court to enlarge the time; *Re Mansel, Rhodes* v. *Jenkins*, 7 Ch. D. 711. For cases in which leave to appeal, after the expiration of the time allowed, has been given, see *Fitzgerald* v. *Dawson*, 24 W. R. 129; *Re Baillie's Trust*, 4 Ch. D. 785; *Re Ambrose Lake Tin and Copper Co., Taylor's case*, 8 Ch. D. 643.

(*d*) A person, who, though not a party to the proceeding, has an interest in the subject matter which is affected by the judgment or order, may appeal therefrom; Dan. Pr. 1330—1332, 1348; *Bruff* v. *Cobbold*, L. R. 7 Ch. 217; but he must first obtain leave to appeal; *Ibid.* Such leave is applied for by motion on notice; Dan. Pr. 1348.

1435.
Notice of appeal motion (*e*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—, may be reversed.

[*If part only of the judgment or order is appealed from, add:*] so far as it directs that [*Here specify the part of the judgment or order complained of*].

And that it may be adjudged [*Or*, ordered] that [*Here state the relief claimed*].

1437.
Præcipe on setting down motion for hearing (*f*).

187—. B. No.

In the Court of Appeal.

B. *v.* D.

Enter for hearing the appeal of the plaintiff [*or as may be*] from the judgment [*Or*, order] dated the —— day of ——, 187—.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party setting down; see* No. 92 *ante.*]

(*e*) All appeals to the Court of Appeal are to be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding than such notice of motion is necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion must state whether the whole or part only of such judgment or order is complained of, and in the latter case must specify such part; R. S. C. Ord. LVIII. 2. If a party appeals from part only of the judgment or order, he thereby admits the remainder thereof to be correct; he will not be allowed to appeal piecemeal; Dan. Pr. 1335. As to amending the notice of appeal, see *post* No. 1439, and note thereto. Notice of appeal from a judgment, whether final or interlocutory, is a fourteen days' notice, and notice of appeal from an interlocutory order is a four days' notice; R. S. C. Ord. LVIII. 4. The notice of appeal must be served upon all parties directly affected by the appeal, but it is not necessary to serve parties not so affected; the Court of Appeal may, however, direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give judgment and make such order as might have been given or made if the persons served with such notice had been originally parties; *Ibid.* rule 3. As to the time within which the notice must be served, see *Ibid.* rules 9, 15; and note (*c*) to No. 1433 *ante*. No affidavit by the respondent of having been served with the notice of appeal is necessary; *Ex parte Lows, Re Lows*, 7 Ch. D. 160. For cases in which the Court of Appeal has ordered the notice of appeal to be served on persons not originally served therewith, directing the hearing of the appeal to stand over in the meantime, see *Purnell* v. *Great Western Railway Co.*, 1 Q. B. D. 636; *Hunter* v. *Hunter*, 24 W. R. 504.

(*f*) Before the day named in the notice of motion, the appeal must be set down for hearing, otherwise it cannot be placed in the paper for hearing, and the respondent will be entitled to have the motion treated as an abandoned

1438. Certificate on setting down an appeal from an interlocutory order (*g*).

I certify that the order from which this appeal is brought was made on an application for an injunction [*or as may be*].

[*Name and address of solicitor or party; as in* No. 92 *ante.*]

1439. Notice of motion for leave to amend the notice of appeal (*h*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that he may be at liberty to amend the notice of motion by way of appeal from the judgment [*Or*, order] dated the —— day of ——, 187—, by [*Here specify the amendment which it is desired to make*].

1440 Motion paper to withdraw appeal by consent (*hh*).

Formal parts: see post No. 1570.

To move on behalf of all parties, that the appeal of the plaintiff

motion, and dismissed with costs accordingly; R. S. C. Ord. LVIII. 8; *Re National Funds Assurance Co.*, 4 Ch. D. 305; *Re Mansel, Rhodes* v. *Jenkins*, 7 Ch. D. 711. If it is not set down, the respondent should not appear, but may make a substantive application for his costs; *Webb* v. *Mansel*, 2 Q. B. D. 117. Such application should be upon notice; *Re Oakwell Collieries*, 7 Ch. D. 706. The appeal motion is set down for hearing with the Registrar; on setting down an appeal from an affirmative judgment or order, the party appealing must produce to the Registrar the judgment or order appealed from or an office copy thereof; R. S. C. Ord. LVIII. 8; this rule does not apply where the appeal is from a refusal of an application; *Smith* v. *Grindley*, 3 Ch. D. 80. In every case the party appealing must leave with the Registrar a copy of the notice of appeal to be filed; R. S. C. Ord. LVIII. 8. On entering or setting down the appeal motion for hearing, a fee is payable of £2 on the higher scale, and £1 on the lower scale, by means of a stamp impressed upon the *præcipe;* Ord. as to Court Fees, Oct. 1875, Sched.; Ord. as to Fees, April, 1876, Sched.; Wilson, 506, 522.

(*g*) This certificate is necessary only where the appeal is from an order on an interlocutory application. Appeals from orders on the following applications are put in a separate list for hearing: (1.) Applications for injunctions, prohibitions, writs *ne exeat regno*, *certiorari*, and stop orders on securities or documents in Court; (2.) Applications for and relating to the appointment of receivers, managers, and official liquidators; (3.) Applications for enlarging time for redemption, for payment into court, or for doing any other act or taking any proceeding; (4.) Applications relating to wards or infants, and the management of their property; (5.) Applications relating to matters of contempt, and to the execution of judgments and orders; (6.) Applications relating to the discovery and production of documents; (7.) Generally all applications relating to practice and procedure. In such cases the solicitor must certify at the foot of the notice of motion the class to which it belongs; Registrar's notice, Jan. 1877.

(*h*) Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit; R. S. C. Ord. LVIII. 3.

(*h h*) The leave of the Court of Appeal must be obtained to the withdrawal

[*or as may be*] from the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—, may be withdrawn.

[*If the appeal has been set down, add:*] And that the said appeal may be struck out of the list of appeals for hearing accordingly.

1441. Notice of motion to withdraw appeal where not consented to (*hh*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that he may be at liberty to withdraw his appeal from the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—.

[*If the appeal has been set down, add:*] And that the said appeal may be struck out of the list of appeals for hearing accordingly.

1442. Notice of motion to stay proceedings pending an appeal (*j*).

Formal parts: see post No. 1571.

on the part of the plaintiff [*or as may be*], that all proceedings upon or under the judgment [*Or*, order] dated the —— day of ——, 187—, made in this action may be stayed pending the hearing of the appeal therefrom, whereof notice was served by the applicant on the —— day of ——, 187—.

1443. Notice of motion for security for costs of appeal (*k*).

Formal parts: see post No. 1571.

on the part of the defendant [*or as may be*], that the plaintiff [*or as may be*] may be ordered to give security in the sum of £——

of an appeal; Dan. Pr. 1352; see *Re Oakwell Collieries*, 7 Ch. D. 706. The application for the purpose is by *ex parte* motion to the Court of Appeal, where the respondent consents; if the respondent does not consent, the application must be by motion on notice, and the respondent will be entitled to the costs of the appeal, including the costs of the application to withdraw it: Dan. Pr. 1352, 1353.

(*h h*) See note (*h h*) to No. 1440 *ante*.

(*j*) An appeal does not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from or any Judge thereof or the Court may so order; R. S. C. Ord. LVIII. 16. An application for an order staying proceedings pending an appeal must be made upon notice; *Rep. of Peru* v. *Weguelin*, 24 W. R. 297; and must be made in the first instance to the Court appealed from, or a Judge thereof; R. S. C. Ord. LVIII. 17; *Goddard* v. *Thompson*, 26 W. R. 362. As to suspending the execution of a judgment or order, see Dan. Pr. 1335—1339; *Kelly* v. *Hutton*, 15 W. R. 916; *Merry* v. *Nickalls*, L. R. 8 Ch. 205; *Cooper* v. *Cooper*, 2 Ch. D. 492; *Morgan* v. *Elford*, 4 Ch. D. 388. The applicant must in any event pay the costs of the application; *Merry* v. *Nickalls*, *ubi supra*; *Cooper* v. *Cooper*, *ubi supra*.

(*k*) Such deposit or other security for the costs to be occasioned by any appeal must be made or given as may be directed under special circumstances by the Court of Appeal; R. S. C. Ord. LVIII. rule 15. The application for security is by motion to the Court of Appeal upon notice; R. S. C. Ord. LVIII. rule 18; the notice of motion may be served without leave; *Grills* v. *Dillon*, 2 Ch. D. 325. The application must be made before the costs of the appeal have been actually incurred by the respondent; *Grant* v.

to answer the costs of his appeal from the judgment [*Or*, order] dated the —— day of ——, 187—. And that the said appeal may not be placed in the paper for hearing until fourteen days next after such security shall have been given, and notice thereof shall have been given to the applicant. And that the costs of this application may abide the result of the appeal (*l*).

1444. Notice of motion to dismiss appeal for want of prosecution (*m*).

Formal parts : see post No. 1571.

on the part of the defendant [*or as may be*], that the appeal of the plaintiff [*or as may be*] from the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—, may stand dismissed

[*If there are other respondents than the applicant, add :*] as against the applicant,

for want of prosecution, with costs to be paid by the plaintiff [*or as may be*] to the applicant, including in such costs the applicant's costs of the application for security for the costs of the said appeal and of this application.

1445. Notice of motion by respondent for leave to serve notice of his intention to contend that the judgment or order appealed from ought to be varied (*n*).

Formal parts : see post No. 1571.

on the part of the defendant [*or as may be*], that, notwithstanding the time limited has expired, he may be at liberty on or before the —— day of ——, 187—, to serve upon the parties who may be affected thereby a notice of his intention to contend, upon the hearing of the plaintiff's appeal from the judgment [*Or*, order] dated the —— day of ——, 187—, that the said judgment [*Or*, order] ought to be varied.

Banque Franco-Egyptienne, 1 C. P. D. 143. The application must be supported by an affidavit showing special circumstances entitling the applicant to security ; R. S. C. Ord. LVIII. 15 ; *The Victoria*, 1 P. D. 280. As to what are such special circumstances, see *Wilson* v. *Smith*, 2 Ch. D. 67 ; *Phosphate Sewage Co.* v. *Hartmont*, 2 Ch. D. 811 ; *Clarke* v. *Roche*, 25 W. R. 209 ; *Grant* v. *Banque Franco-Egyptienne*, 2 C. P. D. 430. As to the mode of giving security, and of enforcing it, see *post* Nos. 1811 to 1830.

(*l*) See *Phosphate Sewage Co.* v. *Hartmont*, 2 Ch. D. 811.

(*m*) The Court will not, in ordering an appellant to give security, order the appeal to be dismissed if the security is not given within a limited time ; *Wilson* v. *Smith*, 2 Ch. D. 67 ; but if security be not given within a reasonable time, the appeal will be dismissed with costs for want of prosecution ; *Judd* v. *Green*, 4 Ch. D. 784 ; *Vale* v. *Oppert*, 5 Ch. D. 633.

(*n*) It is not, under any circumstances, necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he must give notice of such intention to any parties who may be affected by such contention. The omission to give such notice will not diminish the powers conferred by the act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs ; R. S. C. Ord. LVIII. 6. Such notice must, in the case of an appeal from a final judgment, be an eight days' notice, and in

1446.
Respondent's notice of his intention to contend that judgment or order appealed from ought to be varied (*o*).

Formal parts: see ante No. 21.

Take notice that, upon the hearing of the plaintiff's [*or as may be*] appeal from the judgment [*Or*, order] made in this action and dated the —— day of ——, 187 , the defendant C. D. [*or as may be*] intends to contend that the said judgment [*Or*, order] should be reversed or varied so far as it directs that [*Here specify the part of the judgment or order complained of*]. And that instead thereof it should be adjudged [*Or*, ordered] that [*Here state the relief claimed*].

1447.
Affidavit of service thereof.

[*Same as* No. 741 *ante*.]

1448.
Motion paper for leave to use short-hand writer's notes of evidence (*p*).

Formal parts: see post No. 1570.

To move on the part of the plaintiff [*or as may be*], that all parties may be at liberty to read and use on the hearing of the plaintiff's appeal from the judgment [*Or*, order] dated the —— day of ——, 187—, a duly verified transcript of the shorthand writer's notes of the evidence given orally on the trial of this action [*Or*, on the hearing of the application on which the said order was made]. And that the costs of transcribing the said notes, and of this application, may abide the result of the appeal.

the case of an appeal from an interlocutory order, a two days' notice; *Ibid.*, 7; but this time may be enlarged by a special order; *Ibid.*, 6, 7.

(*o*) See R. S. C. Ord. LVIII. 6; note (*n*) to No. 1445 *ante*. The notice must be served upon all parties who may be affected by the contention; *Ibid.* As to the effect of an omission to give the notice, see *Ibid.*; where a respondent asked for relief against a co-respondent without giving notice, it was held that all that the co-respondent could ask for was further time; *Hunter* v. *Hunter*, 24 W. R. 527; but where the respondent did not give the appellant notice of his intention to raise a question, it was held that it was not open for him to raise that question on the appeal; *Harris* v. *Aaron*, 4 Ch. D. 749.

(*p*) When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question must, subject to any special order, be brought before the Court of Appeal as follows: (*a.*) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed; (*b.*) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient; R. S. C. Ord. LVIII. 11. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court will have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient; *Ibid.*, rule 13. In *Bigsby* v. *Dickinson*, 4 Ch. D. 24, and *Pearson's case*, 25 W. R. 618, the Court of Appeal, on the hearing of the appeal, allowed the costs of transcribing the shorthand writer's notes of evidence taken orally in the Court below; but it seems desirable to obtain the directions of the Court, before going to the expense of obtaining a transcript of such notes.

1449. Affidavit verifying transcript of shorthand writer's notes.

Formal parts: see ante No. 693.

1. In pursuance of instructions received by me from Messrs. X. and Y., of [*place of business*], the solicitors in this action for the plaintiff [*or as may be*], I on the —— day of ——, 187—, attended at the trial of this action before his lordship the Master of the Rolls [*or as may be*], and I then and there took shorthand notes of the evidence of E. F., G. H., &c. witnesses in this action, given orally at the said trial.

2. The paper writing now produced and shown to me, and marked A. (*q*), is a transcript of my said notes, and is a true and correct statement of the evidence of the said E. F., G. H., &c., given on the said trial.

1450 Motion paper for liberty to print evidence not printed in the Court below (*r*).

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*or as may be*], that he may be at liberty to print for the purpose of his appeal for the judgment [*Or*, order] made in this action, and dated —— day of ——, 187—, the Judge's notes [*or as may be*] of the evidence taken orally in the Court below.

1451. Notice of intention to apply for leave to adduce further evidence (*s*).

Formal parts: see ante No. 21.

Take notice that, upon the hearing of the plaintiff's [*or as may be*] appeal from the judgment dated the —— day of ——, 187—, the plaintiff [*or as may be*] will apply for the special leave of the Court of Appeal to adduce further evidence upon the said appeal as to [*Here specify the points upon which it is intended to adduce further evidence*], upon the grounds that [*Here specify the special grounds upon which the application will be made*].

(*q*) For form of memorandum of exhibit, see No. 723 *ante*.

(*r*) Where evidence has not been printed in the Court below, the Court below or a Judge thereof, or the Court of Appeal or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order will have to bear the costs thereof, unless the Court of Appeal or a Judge thereof otherwise order; R. S. C. Ord. LVIII. 12. The application must be made in the first instance to the Court below or a Judge thereof; *Ibid.*, rule 17. For order in like case, see *Anon.*, W. N. (1876) 23.

(*s*) The Court of Appeal has full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) will be admitted on special grounds only, and not without special leave of the Court; R. S. C. Ord. LVIII. 5; it is impossible to lay down, *à priori*, what is a sufficient "special ground" within this rule, but further evidence will not

1452.
Præcipe for *subpœna ad test.* on hearing of appeal (*t*).

[*Same as* No. 626 *ante, entitling the præcipe thus:* "In Her Majesty's Court of Appeal."]

1453.
Subpœna ad testificandum (*u*).

[*Same as* No. 627 *ante, entitling the subpœna* "In Her Majesty's Court of Appeal," *and the witness being required to appear before* "our Court of Appeal."]

1455.
Notice to witness of time and place of attendance.

[*Same as* No. 629 *ante, the witness being required to appear before* "Her Majesty's Court of Appeal, at the Court of Appeal in Lincoln's Inn, London;" *Or,* "at the Court of Appeal at Westminster Hall, in the county of Middlesex."]

1456.
Brief on hearing of appeal (*w*).
(1) Contents.

187—. B. No. .

(1) In Her Majesty's Court of Appeal.

Between A. B. . . . Plaintiff,

and

C. D. . . . Defendant.

Brief for the plaintiff [*Or,* defendant] on the plaintiff's [*or as may be*] appeal.

Observations.

[*Here copy any necessary and proper observations.*]

be admitted as a matter of course; *Jones* v. *Chennell*, 26 W. R. 595; for circumstances which were held to constitute a "special ground," see *Jones* v. *Chennell, ubi supra.* No substantive application for leave to adduce such further evidence is necessary; it is sufficient for the party desiring to adduce fresh evidence to give notice to the opposite party that, on the hearing of the appeal, he will apply for leave to adduce such further evidence; *Hastie* v. *Hastie*, 1 Ch. D. 562; *Justice* v. *Mersey Steel and Iron Co.*, 24 W. R. 199; *Jones* v. *Chennell*, 26 W. R. 595. For cases in which further evidence was admitted, see *Bigsby* v. *Dickinson*, 4 Ch. D. 24; *Jones* v. *Chennell*, 26 W. R. 595.

(*t*) See Cons. Ord. XXVIII. 1.

(*u*) See note (*d*) to No. 627 *ante.* In *Gover's case*, 24 W. R. 36, the appellant moved the Court of Appeal upon notice for leave to issue a *subpœna*, to compel the attendance of a witness on the hearing of the appeal; no leave, however, seems to be necessary; see R. S. C. Ord. LVIII. 5, and consider *Hastie* v. *Hastie*, 1 Ch. D. 562; *Justice* v. *Mersey Steel and Iron Co.*, 24 W. R. 199. For form of indorsement on the *subpœna*, see *ante* No. 94 or No. 95.

(*w*) The brief on the appeal will consist of counsel's brief on the trial or hearing in the Court below: a copy of the notes of any evidence given orally

[*Fold the brief longways and indorse it, thus :*]
(2) In Her Majesty's Court of Appeal.

Brown
v.
Dobinson.

Brief on hearing of plaintiff's appeal from judgment [*Or*, order] dated —— day of ——, 187—.

For [*Continue as in* No. 772 *ante, to end*].

(2) Indorsement.

1457.

In Her Majesty's Court of Appeal. 187—. B. No. .
B. *v.* D.

We consent to the plaintiff's [*or as may be*] appeal from the judgment [*Or*, order] dated —— day of ——, 187—, being placed in the paper of appeals for hearing before the Court of Appeal on the —— day of ——, 187—.

Dated —— day of ——, 187—.

O. P., solicitor for appellant.
Q. R., solicitor for respondent C. D.
S. T., solicitor for all the other respondents.

Consent to appeal being prematurely heard (*x*).

1458.

Formal parts : see post No. 1571.

on the part of the plaintiff [*or as may be*], that the plaintiff's appeal from the judgment [*Or*, order] made in this action and dated the —— day of ——, 187—, may be advanced, and may be ordered to be heard next after the appeals which have already been placed in the paper of any day for hearing.

Notice of motion to advance an appeal (*y*).

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in the Court below : a copy of the judgment or order appealed from : a copy of the notice of appeal motion : a copy of the respondent's notice (if any) of his intention to contend that the judgment or order appealed from ought to be varied, and of any other notices relating to the appeal : where it is desired to adduce further evidence upon the appeal, a copy of such further evidence, if it has been taken by affidavit or deposition ; or, if it is intended to examine witnesses orally in open Court, a concise statement of the material facts which each witness can prove. The brief should also be accompanied by any necessary and proper observations. As to the fees allowed on an appeal, see *Sturgis* v. *Morse*, 26 Beav. 562.

(*x*) Except by consent, the appeal will not come into the paper for hearing before the day named in the notice of appeal ; R. S. C. Ord. LVIII. 8.

(*y*) The appeal is set down by being entered by the officer in the proper list of appeals, and will come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct ; R. S. C. Ord. LVIII. 8. As to advancing appeals, see *London, Chatham, and Dover Rail. Co.* v. *Imperial Mercantile Credit Association*, L. R. 3 Ch. 231 ;

Section II.—Appeals to the House of Lords (*a*).

1459.
Petition of appeal (*b*).

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The humble (*c*) petition and appeal of A. B., of [*residence and addition*].

Your petitioner humbly (*c*) prays, that the matter of the judgment [*Or*, order ; *Or*, orders] set forth in the schedule hereto

[*If part only of the judgment or order is appealed against, say:*] so far as the same is therein stated to be appealed against,

may be reviewed before Her Majesty the Queen in Her Court of Parliament, and that the same judgment [*Or*, order]

Lazenby v. *White*, L. R. 6 Ch. 89. Appeals from orders made on certain interlocutory applications are put in a separate list for hearing ; Registrar's notice, Jan. 1877 ; note (*g*) to No. 1438 *ante*.

(*a*) An appeal lies to the House of Lords from any order or judgment of Her Majesty's Court of Appeal in England ; Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 3. As to the persons before whom such appeals are to be heard, see the Appellate Jurisdiction Act, 1876, s. 5 ; as to the hearing and determination of appeals during a prorogation of Parliament, see *Ibid.*, s. 8 ; and during a dissolution of Parliament, see *Ibid.*, s. 9. As to the practice and procedure on appeals to the House of Lords, see *Ibid.*, s. 11 ; Forms and Standing Orders of Aug. 1876 ; and see Dan. Pr. 1360—1376.

(*b*) Every appeal to the House of Lords is to be brought by way of petition to the House, praying that the matter of the order or judgment appealed against may be reviewed before Her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal ; the Appellate Jurisdiction Act, 1876, s. 4. For form of petition and appeal, see Forms and Standing Orders of Aug. 1876. The petition and appeal must be printed on parchment (quarto size), in such form as will enable copies thereof to be thereafter bound up with the printed cases ; Directions for Agents, Aug. 1876 ; and must be lodged in the Parliament office for presentation to the House ; *Ibid.* It must be so lodged within one year from the date of the last judgment or order appealed from ; Standing Ord. I. ; except where the person entitled to appeal is within the age of twenty-one years, or *coverte*, *non compos mentis*, imprisoned, or out of Great Britain and Ireland, in which cases it is sufficient if the petition and appeal be lodged in the Parliament office within one year next after full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland ; *Ibid.* But in no case will any person or persons be allowed a longer time, on account of mere absence, to present an appeal, than five years from the date of the last judgment or order appealed against ; *Ibid.* The petition and appeal must be signed, and the reasonableness thereof certified by two counsel who have attended as counsel in the Court below, or purpose attending as counsel on the appeal ; Standing Ord. II.

(*c*) When the petitioner is a peer, this word is omitted.

[*If part only is appealed against, say:*] so far as aforesaid may be reversed, varied, or altered, or that the petitioner may have such other relief (*d*) in the premises as to Her Majesty the Queen in Her Court of Parliament may seem meet. And that C. D. and E. F. [*Here name the respondents*] may be required to lodge such printed cases as they may be advised and the circumstances of the cause may require in answer to this appeal, and that service of such order on the solicitors in the cause of the said respondents may be deemed good service thereof.

X. Y. } [*Signatures of two*
T. Z. } *counsel* (*e*).]

The Schedule above referred to (*f*).

From Her Majesty's Court of Appeal (England).

In a certain cause [*Or*, matter] wherein A. B. was plaintiff and C. D. and E. F. were defendants.

[*If the whole of the judgment or order is appealed from, proceed thus:*] The judgment [*Or*, order] appealed from is in the words following, viz.: [*Here set out the judgment or order in italics*].

[*If part only of the judgment or order is appealed from, proceed thus:*] The judgment [*Or*, order] referred to in the above prayer is in the words following, the portion appealed from being printed in italics [*Here set out the judgment or order, printing the portion complained of in italics, and the portion not complained of in Roman type*].

We humbly conceive this to be a proper case to be heard before your lordships by way of appeal.

X. Y. } [*Signatures of two*
T. Z. } *counsel* (*g*).

1460. Notice to respondents of intention to appeal (*h*).

In the House of Lords.

On an appeal from Her Majesty's Court of Appeal.

Between A. B. . . . Appellant,
C. D. and E. F. . . Respondents.

Take notice that on the —— day of ——, 187—, or so soon after as conveniently may be, a petition of appeal will be presented

(*d*) If specific relief be desired, it can be so stated in the prayer; see the form of petition and appeal in the Forms and Standing Orders of Aug. 1876.

(*e*) As to signature of the petition and appeal by counsel, see Standing Ord. II., and note (*b*) at p. 792, *supra*.

(*f*) The schedule must set out the title of the cause or matter; and the judgment or order appealed against; and where the appeal is not against the whole judgment or order, the part appealed against must be defined.

(*g*) As to signature by counsel, see Standing Ord. II., and note (*b*) at p. 792, *supra*.

(*h*) Not less than two clear days before the petition is lodged for presentation, notice of the intention to appeal must be given to the respondent's solicitors. The notice should be written on the last page of the appeal.

to the House of Lords on behalf of the above-named plaintiff A. B. [*or as may be*], against the judgment [*Or*, order] of Her Majesty's Court of Appeal dated the —— day of ——, 187—.

Dated the —— day of ——, 187—.

X. Y.,
Solicitor for the said A. B.

To the above-named defendants C. D. and E. F., and to Mr. T. Z., their solicitor.

1461.

Certificate of service of notice (*j*).

I, ——, clerk to Messrs. ——, of ——, solicitors for the appellants within-named, hereby certify that on the —— day of ——, I served Messrs. ——, of ——, solicitors for ——, the within-named respondents, with a correct copy of the aforegoing appeal, and with a notice that on the —— day of ——, or as soon after as conveniently might be, the petition of appeal would be presented to the House of Lords on behalf of the appellant.

1462.

Affidavit of service of order for respondents to lodge cases (*k*).

Title: as in No. 1460 *ante.*

E. F., of [*residence and addition*], maketh oath and saith, that he did on the —— day of ——, 187—, serve the within order upon C. D., the respondent within-named [*Or*, upon G. H., of [*place of business*], the solicitor for C. D., the respondent within-named], by delivering to, and leaving with the said C. D. [*Or*, G. H.] a true copy of the said order; and at the same time showing to him the said original order.

Sworn [*&c.: see ante* No. 696].

(*j*) See note (*h*) to No. 1460 *ante*. The certificate must be indorsed on the petition.

(*k*) Upon the petition and appeal being lodged for presentation, if the House be then sitting, or, if not, on the next ensuing meeting of the House, an order will be issued to the appellant's agent, ordering the respondents to lodge cases in answer to the appeal; Directions for Agents of Aug. 1876. This order must be served on the respondents or their solicitors; *Ibid.*; the service is effected by delivering a true copy of the order, at the same time showing the original; Dan. Pr. 1362. Within six weeks from the date of the presentation of the appeal to the House, the order, together with an affidavit of due service entered thereon, must be returned to the Parliament office, unless within that period all the respondents shall have lodged their printed cases; Standing Orders III. and V. The solicitors of those respondents who purpose lodging printed cases in answer to the appeal, should, upon being served with the order, attend at the Parliament office, and enter their names in the appearance book; Directions for Agents, Aug. 1876.

1463.
Certificate of sufficiency of substitute (*l*).

Lodged in the Parliament Office on the —— day of ——, 187—.

In the House of Lords.

A. B. and others *v.* C. D. and others.

In compliance with Standing Order No. IV., I [*Or*, we] submit the name of [*Here insert full name*], of [*address and description*], as a fit and proper substitute to enter into the recognizance thereby required: and I [*Or*, we] certify that in my [*Or*, our] belief the said [*Insert full name*] is worth upwards of £500 over and above his just debts.

Dated —— day of ——, 187—.

X. Y.,
Solicitor for the appellant (*m*).

1464.
Notice to be indorsed on copy certificate served on respondents' agents (*n*).

In the House of Lords.

A. B. and others *v.* C. D. and others.

Take notice that the appellant A. B. proposes [*Insert name of proposed substitute*], of [*address and description*], as a substitute to

(*l*) Unless the appellant obtains leave to prosecute his appeal *in formâ pauperis* (see *post* Nos. 1469 to 1471), he must give security to the Clerk of the Parliaments by recognizance to be entered into, in person or by substitute, to the Queen, in the penalty of £500, conditioned to pay to the respondent or respondents all such costs as may be ordered to be paid by the House in the matter of the appeal; in the event of a substitute being proposed to enter into the recognizance, the appellant must, within one week after the presentation of the appeal, submit to the Clerk of the Parliaments, the name of such substitute, and a certificate of the solicitor or agent of the appellant, certifying his belief in the sufficiency of the substitute so proposed, must at the same time be lodged in the Parliament office; Standing Ord. IV.; Directions for Agents, Aug. 1876. Two clear days' previous notice of the name of the person proposed as substitute must be given to the solicitor or agent of the respondent; Standing Ord. IV.; and a certificate of such notice must be written at the foot of the certificate of sufficiency lodged in the Parliament office; for form of notice, see *post* No. 1464; for form of certificate of service, see *post* No. 1465. At the termination of one week from the lodgment of the certificate, the recognizance will be issued to the solicitor or agent of the appellants, for execution before a commissioner appointed to administer oaths in the Supreme Court of Judicature in England, or a commissioner appointed to administer oaths in Chancery in Ireland, or before a justice of the peace in Scotland; and it must be returned to the Parliament office, duly executed, within one week from the date of the issue thereof to the solicitor or agent of the appellants; otherwise the appeal will stand dismissed; Standing Ord. IV.; Directions to Agents of Aug. 1876.

(*m*) The certificate may be signed by the country solicitor or agent of the appellants.

(*n*) This notice must be served two clear days before the certificate of sufficiency is lodged in the Parliament office; Standing Ord. IV.; a copy of the certificate of sufficiency must be served with it.

enter into the recognizance required by Standing Order IV. And that it is the intention of the said appellant on the —— day of ——, 187—, or as soon after as conveniently may be, to lodge in the Parliament Office a certificate of which the within is a copy.

Dated —— day of ——, 187—.

X. Y.,
Solicitor for the appellant A. B.

To C. D., the above-named respondent, and to Mr. T. Z., his solicitor.

1465.

Certificate of service of notice (*o*).

I certify that a copy of the above certificate and two clear days' notice of the intention to lodge the same in the Parliament Office has been served on the solicitors or agents of the respondents.

Dated —— day of ——, 187—.

1466.

Certificate of sufficiency of sureties (*p*).

Lodged in the Parliament Office on the —— day of ——, 187—.

In the House of Lords.

A. B. and others *v.* C. D. and others.

In compliance with Standing Order No. IV., I [*Or*, we] submit

(*o*) This certificate must be written on the certificate of sufficiency, and signed by the London solicitor or agent of the appellants. For form of certificate, see Forms and Orders of Aug. 1876.

(*p*) Unless the appellant obtains leave to prosecute his appeal *in formâ pauperis* (see *post* Nos. 1469 to 1471), he must either pay to the receiver of fees to the Parliament office, for payment into the fee fund of the House of Lords, the sum of £200, or procure two sufficient sureties, to the satisfaction of the Clerk of the Parliaments, to enter into a joint and several bond in the sum of £200; such sum of £200, or such bond, to be subject to the order of the House with regard to the costs of the appeal; Standing Ord. IV.; within one week after the presentation of the appeal, the appellant must either pay in to the account of the fee fund of the House of Lords the said sum of £200, or submit to the Clerk of the Parliaments the names of the sureties proposed to enter into the said bond; and at the time of submitting the names to the Clerk of the Parliaments, a certificate of the solicitor of the appellant, certifying his belief in the sufficiency of the sureties proposed, must be lodged in the Parliament office; Standing Ord. IV.; Directions for Agents, Aug. 1876. Two clear days' previous notice of the names of the persons proposed as sureties must be given to the solicitor or agent of the respondent; Standing Ord. IV.; and a certificate of such notice must be written at the foot of the certificate of sufficiency lodged in the Parliament office; for form of notice, see *post* No. 1467; for form of certificate of service, see *post* No. 1468. At the termination of one week from the lodgment of the certificate, the bond will be issued to the solicitor or agent of the appellant for execution before a commissioner to administer oaths in the Supreme Court of Judicature

the names of L. M. [*full name*], of [*address and description*], and N. O. [*full name*], of [*address and description*], as fit and proper sureties to enter into the bond thereby required: and I [*Or*, we] certify that in my [*Or*, our] belief the said L. M. and the said N. O. are each worth upwards of £200 over and above their just debts.

Dated —— day of ——, 187—.

X. Y.,
Solicitor for the appellant (*q*).

1467.
Notice to be indorsed on copy certificate served on respondents' agents (*r*).

In the House of Lords.

A. B. and others *v.* C. D. and others.

Take notice that the appellant A. B. proposes L. M., of [*address and description*], and N. O., of [*address and description*], as sureties to enter into the bond required by Standing Order IV. And that it is the intention [*Continue as in* No. 1464 *ante, to end*].

1468.
Certificate of service of notice (*s*).

[*Same as* No. 1465 *ante.*]

1469.
Petition of the appellant for leave to sue *in formâ pauperis* (*t*).

In the House of Lords.

On an appeal from Her Majesty's Court of Appeal (England).

Between A. B. . . . Appellant.
C. D. and E. F. . . Respondents.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled.

The humble petition of the appellant.

Showeth:

That on the —— day of ——, 187—, your petitioner presented

in England, or a commissioner to administer oaths in Chancery in Ireland, or a justice of the peace in Scotland; and it must be returned to the Parliament office, duly executed, within one week from the date of the issue thereof; otherwise, the appeal will stand dismissed; Standing Ord. IV.; Directions for Agents of Aug. 1876. For form of certificate of sufficiency, see Forms and Orders of Aug. 1876.

(*q*) The certificate may be signed by the country solicitor or agent of the appellants.

(*r*) See note (*n*) to No. 1464 *ante*.

(*s*) See note (*o*) to No. 1465 *ante*.

(*t*) As to appealing *in formâ pauperis*, see Dan. Pr. 1361. For forms of affidavit and certificate in support of the petition, see *post* Nos. 1470, 1471.

to your lordships a petition of appeal: complaining of a judgment [*Or*, order] of Her Majesty's Court of Appeal (England) dated —— day of ——, 187—

That your petitioner being very poor, as by the affidavit and certificate annexed appears, is by reason of such his poverty unable to prosecute his appeal, unless he is admitted by your lordships to do so *in formâ pauperis.*

That by an order of the High Court of Justice made in the said cause your petitioner was, on the —— day of ——, 187—, admitted to prosecute his action in the said Court *in formâ pauperis.*

Your petitioner therefore most humbly prays, that your lordships will be pleased to order that he may be admitted to prosecute his said appeal *in formâ pauperis.*

And your petitioner will ever pray, &c.

1470.
Affidavit of poverty.

A. B. maketh oath and saith, that on or about the —— day of ——, 187—, he intends to offer for presentation to the House of Lords a petition of appeal: complaining of [*State what: see ante* No. 1469].

That the said A. B. is very poor, and is not worth in all the world the sum of five pounds in lands, tenements, goods, or chattels: his wearing apparel, and the subject-matter of the said appeal only excepted; and is, by reason of such his poverty, unable to prosecute the said appeal.

Sworn before me, at ——, in the (county) of ——, this —— day of ——, 187—. } A. B.

[*Signature of person before whom affidavit sworn, and style of office.*]

1471.
Certificate of poverty (*v*).

We, the undersigned, do hereby certify that A. B., of [*residence and addition*], in the above-written affidavit named, is a very poor person.

Dated this —— day of ——, 187—.

C. D., Minister of the parish [*or as may be*] of ——, in the (county) of ——.

E. F. } Churchwardens of the said parish [*or*
G. H. } *as may be*] of ——.

(*v*) This certificate must be signed by the minister and churchwardens of the parish where the appellant resides.

1472. Petition for extension of time to present cross appeal (*w*).

In the House of Lords.

A. B. and others *v.* C. D. and others.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled.

The humble petition of the respondent C. D.

Showeth as follows:

1. That the appellant presented his petition of appeal on the —— day of ——, 187—, complaining of a judgment [*Or*, order] of Her Majesty's Court of Appeal (England), dated —— day of ——, 187—.

2. That the time allowed by Standing Order VI.

[*If the time has already been enlarged by order, add:*] enlarged by your lordships' order dated the —— day of ——, 187— for the petitioner to present his cross-appeal to this House will expire on the —— day of ——, 187—.

3. That your petitioner [*Set forth cause of delay*].

Your petitioner therefore humbly prays that your lordships will be pleased to grant him [*State time required*] further time to present his cross-appeal to this House.

And your petitioner will ever pray, *&c.*

T. Z.,
Solicitor for the petitioner.

1473. Notice of intention to present the petition (*x*).

The petition of which the within is a copy is intended to be presented to the House of Lords on ——day, the —— day of ——, 187—, or as soon after as may be.

Dated this —— day of ——, 187—.

1474. Consent to petition.

I consent to the prayer of the above petition.

X. Y.,
Appellant's agent.

(*w*) Cross-appeals must be presented to the House within the period allowed for lodging cases in the original appeal; Standing Ord. VI.; *i.e.*, within six weeks from the presentation of the original appeal to the House; Standing Ord. V.; unless such time expires during the recess of the House, in which case the time is extended to the third sitting day of the next ensuing meeting of the House; Standing Ord. VII. As to enlarging the time, see Dan. Pr. 1364, and note (*f*).

(*x*) Two days' notice of the application for further time must be given to the appellant's agent, and the notice should be accompanied by a copy of the petition.

1475.
Petition for leave to present cross-appeal after expiration of time (*y*).

[*Proceed as in* No. 1472 *ante, to the end of paragraph* 1.]

2. That the time allowed by Standing Order VI. [*If the time has been enlarged by order, add:*] enlarged by your lordships' order dated the —— day of ——, 187 - for your petitioner to present his cross-appeal to this House expired on the —— day of ——, 187—.

3. That your petitioner from inadvertence miscalculated the time for presenting the said cross-appeal; but he is now ready to present the same.

Your petitioner therefore humbly prays that your lordships will be pleased to order that he may be at liberty now to present his cross-appeal in this cause.

And your petitioner will ever pray, *&c.*

T. Z.,
Solicitor for the petitioner.

1476.
Notice of intention to present petition (*z*).

[*Same as* No. 1473 *ante.*]

1477.
Cross petition of appeal (*a*).

[*Same as* No. 1459 *ante.*]

1478.
Appellant's petition for extension of time to lodge cases and set down appeal for hearing (*b*).

Title and address as in No. 1472 *ante.*

The humble petition of the appellant A. B.

Showeth as follows:

1. That the petitioner presented his petition of appeal on the —— day of ——, 187—, complaining of a judgment [*Or*, order]

(*y*) See note (*w*) to No. 1472 *ante.*

(*z*) See note (*x*) to No. 1473 *ante.*

(*a*) As to cross-appeals, see *Kellett* v. *Kellett*, L. R. 3 H. L. (Eng. & Ir. App. Ca.), 160; Dan. Pr. 1364, 1365. A cross-petition is signed by counsel and presented like an original appeal. As to the time for presenting a cross-appeal, see Standing Orders VI. and VII., and note (*w*) to No. 1472 *ante.* The person presenting a cross-appeal is not usually required to enter into a recognisance for costs; Dan. Pr. 1365.

(*b*) The printed cases, and the appendix thereto, must be lodged in the Parliament office within six weeks from the date of the presentation of the appeal to the House; Standing Ord. V.; unless that time expires during the recess of the House, in which case it is extended to the third sitting day of the next ensuing meeting of the House; Standing Ord. VII. The appeal must be set down for hearing on the first sitting day after the expiration of

of Her Majesty's Court of Appeal (England) dated —— day of ——, 187—.

2. That the time allowed by Standing Order No. V.

[*If the time has already been enlarged by order, add:*] enlarged by your lordships' order of the —— day of ——, 187—,

for the petitioner to lodge his printed cases and the appendix will expire on the —— day of ——, 187—.

3. That your petitioner [*Set forth cause of delay*].

Your petitioner therefore humbly prays that your lordships will be pleased to grant him [*State time required*] further time to lodge his printed cases and the appendix, and to set the cause down for hearing.

And your petitioner will ever pray, *&c.*

X. Y.,
Solicitor for the appellant.

1479. Notice of intention to present the petition (*c*).

[*Same as* No. 1473 *ante.*]

1480. Appellants petition to restore appeal and extend the time for lodging cases (*d*).

[*Proceed as in* No. 1478 *ante, to the end of paragraph* 1.]

2. That the time allowed by Standing Order V.

[*If the time has already been enlarged by order, add:*] extended by your lordships' order of the —— day of ——, 187—,

for the appellant to lodge his printed cases and the appendix, expired on the —— day of ——, 187—.

3. That your petitioner from inadvertence miscalculated the time for lodging his printed cases and the appendix; and your petitioner is informed that in consequence of the said cases and appendix not being lodged within the time limited, your petitioner's appeal stands dismissed.

Your petitioner therefore humbly prays that your lordships will be pleased to order that his appeal

the time allowed for lodging the printed cases and appendix, or it may be set down earlier if all the printed cases and the appendix have been lodged; Standing Ord. V. If the appellant makes default in lodging his printed cases and the appendix, or in setting down the appeal, the appeal will stand dismissed; Standing Ord. V. If a respondent does not lodge his printed cases within the time specified, he will not be heard on the hearing of the appeal; Directions for Agents of 1876; see *post* No. 1482, and note (*f*) thereto. For form of petition to enlarge the time, see App. C. to Forms and Standing Orders of Aug. 1876.

(*c*) A copy of the petition and two clear days' notice of the intention to present it must be served on the respondent's solicitor.

(*d*) See note (*b*) to No. 1478 *ante.*

MIDDLE 3 F

may be restored, and that the time for lodging his printed cases and the appendix and for setting down the cause for hearing may be extended for —— days.

And your petitioner will ever pray, *&c.*

X. Y.,
Solicitor for the appellant.

1481.
Notice of intention to present petition (*e*).

[*Same as* No. 1473 *ante*].

1482.
Respondent's petition for leave to lodge case (*f*).

Title and address : as in No. 1472 *ante.*

The humble petition of the respondent C. D.

Showeth as follows :

1. That the appellant presented his petition of appeal on the —— day of ——, 187—, complaining of a judgment [*Or*, order] of Her Majesty's Court of Appeal (England), dated —— day of ——, 187—.

2. That the time allowed by Standing Order V., for the petitioner to lodge his printed cases has expired ; but such cases are now ready to be lodged.

Your petitioner therefore humbly prays, that he may be at liberty now to lodge his printed cases.

And your petitioner will ever pray, *&c.*

T. Z.,
Solicitor for the petitioner.

1483.
Notice of intention to present petition (*g*).

[*Same as* No. 1473 *ante.*]

(*e*) See note (*c*) to No. 1479 *ante.*

(*f*) As to the time within which the cases should be lodged, see note (*b*) to No. 1478 *ante.* If a respondent does not lodge his printed cases within the time limited, he will not be heard on the hearing of the appeal ; Directions for Agents, Aug. 1876.

(*g*) See note (*x*) to No. 1473 *ante.*

1484.
Formal parts of a case (*h*).

In the House of Lords.

On an appeal from Her Majesty's Court of Appeal (England).

Between A. B. and E. F. . . . Appellants,

and

C. D., G. H., and J. K. . Respondents.

The case of the appellants [*Or*, of the respondents; *Or*, of the respondent C. D.]

[*The case should contain all the material facts; and should concisely narrate the proceedings, and the substance of the pleadings and*

(*h*) Within the time mentioned above, note (*b*) to No. 1478 *ante*, the appellant and those respondents who intend to appear on the hearing of the appeal must lodge printed cases; Standing Ord. V. As to the contents of such cases, and the mode in which they are prepared and settled, see Dan. Pr. 1367, 1368. All printed cases must be signed by one or more counsel who have attended as counsel in the Court below, or purpose attending as counsel at the hearing of the appeal; Standing Ord. V. 3. The case and appendix must be printed quarto size, with seven or eight letters in the margin for facilitating reference, and should be submitted in proof to the clerks in the judicial office; where reference is made in the case to a document printed in the appendix, the case must contain a marginal note of the page of the appendix containing such document; Directions for Agents, Aug. 1876. Each party must lodge in the Parliament Office forty copies of his case and the appendix; and, when all parties have lodged their cases, the appellant's agent must lodge in the Parliament Office ten bound copies of the appeal, the cases of all parties and the appendix; Directions for Agents, Aug. 1876. The following directions for binding printed cases for the use of the Law Lords are contained in App. B. to the Forms and Standing Orders of Aug. 1876:—

1. Ten copies bound in purple cloth; two of the ten to be interleaved, as regards the cases only.

2. Short title of cause on the back.

3. Label on side, stating short title of cause and contents of the volume, thus:—

"A———— and others *v.* B———— and others."

Printed copy of the appeal.

Appellant's case.

Respondent B.'s case.

Respondent C.'s case.

Appendix.

4. The volume to be indented, and the names of the parties written on the indentations to their respective cases.

5. References to the reports of the cause in the Courts below, or the words "Not reported," to be written on the fly-sheet.

6. The bound copies to be lodged immediately after the respondent's cases are delivered in.

The agents are requested to use their discretion as to the size of the volume, arrangement of the cases, and appendix. In dealing with bulky cases, it may be found advisable to bind the appendix as a separate volume, and also to divide the appellants' and respondents' cases into separate volumes.

It is the duty of the appellants' agent to carry out these directions.

evidence or proofs: whether consisting of documents or depositions; and particularly those on behalf of the party whose case it is. The case usually concludes to the following effect:]

The appellants are advised, and humbly submit, that the said judgment [*Or*, order] of the —— day of ——, 187—, is erroneous [*Or*, so far as it ordered, *&c.*, is erroneous], and ought to be reversed, or varied; and the appellants have appealed therefrom to this most honourable House

[*Or, in the respondent's case:*] The respondent is advised, and humbly submits, that the said judgment [*Or*, order] of the —— day of ——, 187—, is right; and that the same ought to be affirmed

for, amongst others, the following

REASONS.

1.
2.
3. } [*State the reasons.*]

[*Signature of counsel.*]

1485.

Formal parts of a joint case (*j*).

Title: as in No. 1484 *ante.*

The Joint Case of the Appellants and Respondents.

[*As to the contents of the case, see* No. 1484 *ante, and note* (*h*) *thereto; it should conclude to the following effect:*]

The appellants are advised, and humbly submit, that the said judgment [*Or*, order] of the —— day of ——, 187—, is erroneous [*Or*, so far as it ordered, *&c.*, is erroneous], and ought to be reversed, or varied; and the appellants have appealed therefrom to this most honourable House for, amongst others, the following

REASONS.

1.
2.
3. } [*State the reasons.*]

The respondents are advised, and humbly submit, that the said judgment [*Or*, order] of the —— day of ——, 187—, is right; and that the same ought to be affirmed for, amongst others, the following

REASONS.

1.
2.
3. } [*State the reasons.*]

[*Signature of counsel.*]

(*j*) In appeals in which the parties are able to agree on their statement of the subject-matter, it is optional to lodge a joint case with the reasons *pro* and *con.*; Directions for Agents, Aug. 1876.

Title, as in No. 1484 *ante.*

CASE OF THE RESPONDENTS W. T. AND J. J.

1486.
Case of formal respondents: referring to the case of the principal respondent (*k*).

The orders from which this appeal is brought relate to divers funds, to which the above-named respondent L. M. T. has been declared to be entitled for her separate use.

The respondent W. T. is the husband of the said L. M. T. The respondent J. J. is the sole surviving trustee of the settlement made on the marriage of the said W. T. with the said L. M. T.: by which all the property of the said L. M. T. is settled upon trusts under which she is entitled thereto for her separate use.

The said action was instituted by the said L. M. T., by J. T. her next friend. The said W. T. and J. J. are two of the defendants thereto; but they have taken no active part in the proceedings therein.

The facts of the case, and proceedings in the action, and the orders of Her Majesty's Court of Appeal (England), from which this appeal is brought, are fully stated in the case of the respondent L. M. T.; and as the respondents W. T. and J. J. are formal parties only to the said action, they crave leave, in order to save expense, to refer to the said case of the said L. M. T. And they are advised, and humbly submit, that the orders appealed against are right, and ought to be affirmed, under the circumstances, and for the reasons, in the said case appearing.

[*Signature of counsel.*]

1487.
Formal parts of an appendix (*l*).

Title: as in No. 1484 *ante.*

APPENDIX.

[*Set out the documents: as in the following scheme* (*m*)*:*]

I. *The Pleadings:*

1. Statement of claim delivered by the appellants on the —— day of ——, 187—.

(*k*) *Duke of Portland* v. *Topham*, H. L. 1864.

(*l*) The appellant must prepare a printed appendix consisting of such documents, or parts thereof, used in evidence in the Court below, as may be necessary for reference on the argument of the appeal. He must furnish to the respondent a list of the proposed documents, and the respondent may, if he pleases, print any additional documents, used in evidence in the Court below, which may be necessary for the support of his case on the argument of the appeal, such documents to be paged consecutively with the appendix. A proof copy of the appendix must be furnished by the appellant's solicitor to the respondent's solicitor, and a proof copy of the additional documents must be furnished by the respondent's solicitor to the appellant's solicitor. Ten copies of the appendix, as soon as printed, must be delivered to the respondent's solicitor, and ten copies of the additional documents to the appellant's solicitor. As to the mode of printing the appendix, and as to lodging copies thereof in the Parliament Office, see note (*h*) to No. 1484 *ante*. The costs of printing the appendix will, in the first instance, be borne by the appellant, and the cost of printing the additional documents by the respondent; but these costs will ultimately be subject to the decision of the House with regard to the costs of the appeal; Directions for Agents, August, 1876.

(*m*) The order in which the documents should be printed in the appendix

2. Statement of defence delivered by the respondent C. D. on the —— day of ——, 187—.
3. Statement of defence delivered by the respondent G. H. on the —— day of ——, 187—.
4. Statement of reply delivered by the appellants on the —— day of ——, 187—.

II. *The Appellants' Evidence by affidavit, and orally:*

5. Affidavit of A. B., of, *&c.*, filed —— day of ——, 187—.
6. Cross-examination of the said A. B. thereon, on behalf of the respondents: taken ——, 187—, and filed ——, 187—.
7. Deposition of L. M., of, *&c.*, taken ——, 187—, and filed ——, 187—.

III. *The Respondents' Evidence by affidavit, and orally:*

8. Affidavit [*&c.: as above*].

IV. *Documentary Evidence:*

9. Admissions in the cause.
10. Exhibit A.: Indenture of settlement dated —— 187—.
11. Exhibit B.: Letter from E. F. to G. H. dated ——, 187—.

V. *Judgments* [*Or, Orders*] *made in the cause:*

12. Judgment [*Or*, Order] of the High Court of Justice, dated —— day of ——, 187—.
13. Judgment [*Or*, Order] of Her Majesty's Court of Appeal (England), dated —— day of ——, 187—, made on appeal from the last-mentioned judgment [*Or*, order].

1488. Petition for leave to amend petition of appeal, and lodge supplemental case (*n*).

Title and address: as in No. 1472 *ante.*

The humble petition of the appellant.

Showeth:

That your petitioner, on the —— day of ——, 18—, presented to your lordships his petition and appeal: complaining of an order of Her Majesty's Court of Appeal (England), dated the —— day of ——, 18—.

will depend upon the circumstances of the particular case. The scheme set out in No. 1487 is suggested as a convenient arrangement. The appendix should be preceded by an index of its contents: in which should be set forth a short description of each document, and the page where it can be found; as thus: "Statement of claim of the appellants, 1"; "Statement of defence of the respondents, 8." The appendix must be paged throughout; and each document should be concisely described: either in the heading, or in a marginal note opposite the commencement. Where a document extends over more than one page of the appendix, its short description should be repeated, in a corner note, at the top of the next and any continuous pages.

(*n*) As to amending the petition of appeal, see Dan. Pr. 1365, 1366. As to lodging a supplemental case, see note (*s*) to No. 1492 *post.*

That your petitioner has duly lodged his case and appendix in support of such appeal; and has set down his said petition and appeal for hearing [*or as may be*].

That since lodging the said case and appendix, a further order has been made by the said Court of Appeal, dated the —— day of ——, 18—, touching, amongst other things, the payment of the costs reserved by the said order of the —— day of ——, 18—.

That your petitioner is advised to appeal to your lordships against the said order of the —— day of ——, 18— ; and is therefore desirous of amending his said petition of appeal, by including therein the said order of Her Majesty's Court of Appeal, dated the —— day of ——, 18—.

Your petitioner therefore humbly prays, that your lordships will be pleased to grant to your petitioner leave to amend his said petition of appeal, by including therein the said order of the —— day of 18— ; and that your petitioner may have leave to lodge a supplemental case relative to such amendment.

And your petitioner will ever pray.

X. Y.,
Agent for the petitioner.

1489. Notice of intention to present petition (*o*).

[*Same as* No. 1473 *ante.*]

1490. Petition for leave to revive appeal, on death of appellant (*p*).

Title and address : as in No. 1472 *ante.*

The humble petition of A. B., of [*residence and addition,*] and C. D., of, *&c.*

Showeth :

That on the —— day of ——, 187—, E. F., the appellant above named, presented his petition of appeal to your lordships : complaining of [*State what : see ante* No. 1488].

That the respective cases of the appellant and respondent were duly lodged, and the cause was set down for hearing before your lordships [*or as may be*].

That the said E. F. departed this life on or about the —— day of ——, 187— : having first duly made and published his last will and testament in writing, whereby he appointed your petitioners, executors thereof : who duly proved the same in the Probate Division of Her Majesty's High Court of Justice on the

(*o*) See note (*c*) to No. 1479 *ante.*

(*p*) See Dan. Pr. 1370. As to lodging a supplemental case, see *post* note (*s*) to No. 1492.

—— day of ——, 187— ; and that your petitioners are now the legal personal representatives of the said E. F. deceased.

That on the —— day of ——, 187—, an order was made by Her Majesty's High Court of Justice, that the proceedings in the said cause should be carried on and prosecuted by your petitioners against the defendants, in like manner as such proceedings might have been carried on and prosecuted by the said E. F., if he had not died [*or as may be*], and a copy of the said order is annexed to this petition.

Your petitioners therefore humbly pray your lordships, that this appeal may be carried on and prosecuted in your lordships' House by your petitioners, in like manner as the same might have been carried on and prosecuted by the said E. F. if he had not died.

And your petitioners will ever pray, &c.

A. B.
C. D.
X. Y., agent for the petitioners (*q*).

1491. Notice of intention to present petition (*r*).

[*Same as* No. 1473 *ante.*]

1492. Supplemental case (*s*).

Title : as No. 1484 *ante.*

Supplemental case of the appellant [*or as may be*].

[*The case should state the material proceedings since the lodgment of the original case, which have rendered the supplemental case necessary. Where the petition of appeal has been amended by including a further judgment or order, the supplemental case should conclude as in* No. 1484 *ante.*]

(*q*) The petition must be signed by the petitioners and their agent.

(*r*) See note (*c*) to No. 1479 *ante.*

(*s*) Where any party or parties to an appeal die pending the same, subsequently to the printed cases having been lodged, and the appeal is revived against his or her representative or representatives, as the person or persons standing in the place of the person or persons so dying as aforesaid ; or where any person or persons, being party or parties in the Court below, have been omitted to be made a party or parties in the appeal, and shall, by leave of the House, upon petition or otherwise, be added as a party or parties to the said appeal, after the printed cases in such appeal shall have been lodged ; a supplemental case must be lodged by the party obtaining the order, stating the order or orders made by the House ; Standing Ord. VIII. As to the preparation, settling, signing, and printing of the case, see note (*h*) to No. 1484 *ante.*

1493. Petition of the appellant, for leave to withdraw appeal, on payment of the respondent's costs (*t*).

Title and address: as in No. 1478 *ante.*

The humble petition of the appellant.

Showeth:

That on the —— day of ——, 187—, the appellant presented his petition and appeal to your lordships: complaining of [*State what: see ante* No. 1478].

That the appeal has not yet been set down for hearing before your lordships [*or as may be*].

That the appellant now proposes to withdraw the said appeal: paying to the respondent the costs incurred by him, as they shall be taxed.

May it therefore please your lordships to permit the appellant to withdraw his said appeal: he paying to the respondent his costs in the said appeal, as the same shall be taxed by the proper officer of your lordships' House.

And your petitioner will ever pray, &c.

X. Y.,
Agent for the petitioner.

1494. Notice of intention to present petition (*u*).

[*Same as* No. 1473 *ante.*]

1495. Petition of the appellant, for leave to withdraw appeal, without costs, by consent (*v*).

[*Proceed as in* No. 1493 *ante, to the end of paragraph* 1.]

That the petitioner and respondent having lodged their printed cases, the said appeal was set down for hearing before your lordships [*or as may be*].

That it has since been agreed between your petitioner and the respondent that the said appeal shall be withdrawn: each party paying the expenses respectively incurred by them in the said appeal.

Your petitioner therefore humbly prays your lordships, that the said appeal may be withdrawn accordingly, without costs; or that your lordships will do otherwise in the premises, as to your lordships shall seem meet.

And your petitioner will ever pray, &c.

X. Y.,
Agent for the petitioner.

(*t*) As to withdrawing appeals, see Dan. Pr. 1366.

(*u*) See note (*c*) to No. 1479 *ante.*

(*v*) See Dan. Pr. 1366. For form of consent by respondent's solicitor, see *ante* No. 1474.

1496.

Motion paper to make an order of the House an order of the High Court of Justice (*w*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff [*or as may be*], that the order of the House of Lords, dated the ——, 187—, on the petition and appeal of the defendant [*or as may be*], from the judgment [*Or*, order] in this action, dated the ——, 187—, may be made an order of this Court.

The order accompanies.

(*w*) See Dan. Pr. 1372. For order in like case, see *Walford* v. *Walford*, V.-C. M. for V.-C. S. 30 July, 1870, Reg. Lib. B. 2249.

CHAPTER XX.

PROCEEDINGS IN PARTICULAR ACTIONS.

SECTION I.—PROCEEDINGS IN AN ACTION UNDER THE BILLS OF EXCHANGE ACT (*t*).

(1.) *The Writ of Summons.*

1497. Writ of summons (*tt*).

187—. B. No. (*u*).

In the High Court of Justice,
Chancery Division (*v*).
[*Name of Judge* (*w*).]
District Registry at —— (*x*).
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant (*y*).

(*t*) By the Rules of the Supreme Court, Ord. II. 6, it is provided, with respect to actions upon a bill of exchange or promissory note, commenced within six months after the same shall have become due and payable, that the procedure under the Bills of Exchange Act, 18 & 19 Vict. c. 67, shall continue to be used. By the Summary Procedure on Bills of Exchange Act, 18 & 19 Vict. c. 67, it is provided that all actions upon bills of exchange and promissory notes, commenced within six months after the same shall have become due and payable, may be by writ of summons in the special form contained in the schedule to the act, and indorsed as therein mentioned; and that the plaintiff, on filing an affidavit of personal service of such writ within the jurisdiction of the Court, or an order for leave to proceed, and a copy of the writ of summons and indorsements thereon, may, in case the defendant shall not have obtained leave to appear, and have appeared to such writ according to the exigency thereof, at once sign final judgment in the form contained in the schedule to the act (on which judgment no proceedings in error lie) for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), and a sum for costs; and that the plaintiff may upon such judgment issue execution forthwith. See further Reg. Gen. M. V. 1855, and Reg. Gen. H. T. 1858.

(*tt*) For form of writ see 18 & 19 Vict. c. 67, Sched. (A); and as to the variations now necessary to be introduced into this form, see *Oger* v. *Bradnum*, 1 C. P. D. 334. As to the preparation, &c., of writs of summons, see *ante*, note (*a*) to No. 210. As to issuing the writ, see note (*a*) at p. 119 *ante*. As to issuing concurrent writs, see *ante*, p. 124. As to renewing the writ, see *ante*, pp. 125, 126. As to amending the writ, see *ante*, pp. 127—131.

(*u*) As to the reference to the record, see *ante*, notes (*c*) and (*f*) to No. 210.

(*v*) See *ante* No. 210, note (*b*).

(*w*) See *ante* No. 210, note (*c*).

(*x*) See *ante* No. 210, note (*d*); a writ of summons under the Bills of Exchange Act (18 & 19 Vict. c. 67) may be issued out of a district registry; *Oger* v. *Bradnum*, 1 C. P. D. 334.

(*y*) See *ante* No. 210, note (*g*); and No. 212.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To C. D., of [*address*].

We warn you that unless within twelve days after the service of this writ on you, inclusive of the day of such service, you obtain leave from

[*If the writ is to be issued out of the London Office, say:*] the Right Honourable the Master of the Rolls [*or as may be; naming the Judge of the Chancery Division to whom it is intended to assign the action*]

[*If the writ is to be issued out of a District Registry, and the defendant resides or carries on business within the district, say:*] the Registrar of the District Registry at ——

[*If the writ is to be issued out of a District Registry, and the defendant neither resides nor carries on business within the district* (*yy*), *say:*] either from the Right Honourable the Master of the Rolls [*or as may be, naming the Judge of the Chancery Division to whom it is intended to assign the action*] or from the Registrar of the District Registry at ——

to appear, and do within that time appear in the Chancery Division of our High Court of Justice, in an action at the suit of ——, the said —— may proceed to judgment and execution.

Witness, the Right Honourable ——, Lord High Chancellor of Great Britain [*Or*, Lord Chief Justice of England], at Westminster, the —— day of ——, in the year of Our Lord one thousand eight hundred and seventy—— (*z*).

N.B.—This writ is to be served (*a*) within twelve calendar months from the date thereof, or, if renewed (*b*), within six calendar months from the date of such renewal, including the day of such date, and not afterwards. The defendant may appear hereto by entering appearance , either personally or by solicitor, at

[*If the writ is to be issued out of the London Office, say:*] the Record and Writ Clerk's Office, Chancery Lane, London.

[*If the writ is to be issued out of a District Registry, and the defendant resides or carries on business within the district, say:*] at the District Registry at —— (*c*).

[*If the writ is to be issued out of a District Registry, and the defendant neither resides nor carries on business within the district* (*cc*), *say:*] either at the District Registry at ——, or at the Record and Writ Clerks' Office, Chancery Lane, London (*d*).

(*y*) As to this form, see *Oger* v. *Bradnum*, 1 C. P. D. 334.

(*z*) See *ante* No. 210, note (*h*).

(*a*) As to service of the writ of summons, see *post* p. 815.

(*b*) As to renewal of the writ, see *ante* pp. 125, 126.

(*c*) See R. S. C. Ord. V. 3.

(*cc*) See *Oger* v. *Bradnum*, 1 C. P. D. 334.

(*d*) See R. S. C. Ord. V. 2.

(2.) *The Indorsements on the Writ* (*a*).

(*a*) *An Indorsement of the Amount claimed for Debt and Costs, and a Copy of the Bill or Note.* 1497a.

The plaintiff claim £——, principal and interest due to h as the holder of a bill of exchange (*Or*, promissory note), of which the following is a copy:

[*Copy bill or note.*]

Indorsed.

And —— for noting, and also £—— for costs. And if the amount thereof be paid to the plaintiff or to h solicitor , within four days from the service hereof, further proceedings will be stayed.

(*β*) *A Notice as to Appearance* (*b*). 1498.

Notice.

Take notice, that if the defendant do not obtain leave from [*If the writ is issued out of the London Office, say:*] the Right Honourable the Master of the Rolls [*or as may be, naming the Judge of the Chancery Division to whom it is intended to assign the action*]

[*If the writ is issued out of a District Registry, and the defendant resides or carries on business within the district, say:*] the Registrar of the District Registry at ——

[*If the writ is issued out of a District Registry, and the defendant neither resides nor carries on business within the district, say:*] either the Right Honourable the Master of the Rolls [*or as*

(*a*) As to the indorsements on writs of summons issued under the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), see the schedule to that Act, and Reg. Gen. M. V. 1855. Such indorsements are four in number: (1) An indorsement of the amount claimed for debt and costs, and a copy of the bill or note; (2) A notice as to appearance; (3) An indorsement of address, as on an ordinary writ of summons; (4) An indorsement of the character of the parties, as on an ordinary writ of summons, where the plaintiff sues or the defendant is sued in a representative capacity. Besides these indorsements, which must be made before the issuing of the writ, the person serving the writ must, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the defendant will not be at liberty, in case of non-appearance, to proceed by default; see R. S. C. Ord. IX. 13; the form in schedule (A) to the statute 18 & 19 Vict. c. 67; Reg. Gen. M. V. 1855; and *ante* No. 293.

(*b*) For the form of this notice, see the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), Sched. A; Reg. Gen. M. V. 1855. As to the variations necessary to be introduced into this form, see *Oger* v. *Bradnum*, 1 C. P. D. 334.

may be, naming the Judge] or the Registrar of the District Registry at ——

to appear, and do not within such time cause an appearance to be entered for him in the Chancery Division of the High Court of Justice, the plaintiff will be at liberty, at any time after the expiration of such twelve days, to sign final judgment for any sum not exceeding the sum above claimed, and such sum as shall be allowed on taxation for costs, and to issue execution for the same.

Leave to appear may be obtained on an application at the

[*If the writ is to be issued out of the London Office, say:*] Chambers of the Master of the Rolls [*or as may be*] situate at [*state where*],

[*If the writ is to be issued out of a District Registry, and the defendant resides or carries on business within the district, say:*] District Registry at ——, in the (county) of ——,

[*If the writ is to be issued out of a District Registry, and the defendant neither resides nor carries on business within the district, say:*] either at the District Registry at ——, in the (county) of ——, or at the Chambers of [*&c., as above*],

supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear in the action.

1498a. (γ) *An Indorsement of the Address of the Person issuing the Writ.*

[*This is the same as on an ordinary writ of summons; see ante* Nos. 226, 227.]

1499. (δ) *An Indorsement of the Character in which the Parties sue or are sued.*

[*This is the same as on an ordinary writ of summons: see ante* Nos. 228—234.]

(3.) *Service of the Writ* (*k*).

1499a. Affidavit of service of writ of summons issued under the Bills of Exchange Act.

Formal parts : see ante No. 693.

1. I did on ——day, the —— day of ——, 187—, serve the above-named defendant with the writ of summons in this action, which appeared to me to have been regularly issued out of the Chancery Division of this honourable Court against the above-named defendant at the suit of the above-named plaintiff, and was dated on the —— day of ——, 187—, by delivering a true copy of the said writ of summons to and leaving the same with the said defendant personally (*k*) at ——, within the jurisdiction of this honourable Court (*l*).

2. At the time of the service of the said writ, memoranda were subscribed to the said writ, and to the copy thereof so delivered and left as aforesaid, and indorsements were made on the said writ, and on the said copy thereof, in the manner and form prescribed by "The Summary Procedure on Bills of Exchange Act, 1855," the General Rules of the 26th of November, 1855, and the Rules of the Supreme Court.

3. The paper writing now produced and shown to me, and marked A. (*m*), is a true copy of the said writ of summons, and of the indorsements thereon (*mm*).

4. I did afterwards, namely, on —— day, the —— day of ——, 187—, indorse on the said writ the day of the month and week of the service thereof (*n*).

(*k*) The service of a writ of summons under the Bills of Exchange Act (18 & 19 Vict. c. 67) must be personal (see the Act, s. 1); consequently no order for substituted or other service of such a writ, or for the substitution of notice for service, under R. S. C. Ord. IX. 2, can be obtained; *Pollock* v. *Campbell*, 1 Ex. D. 50; nor do rules 6 and 6*a* of Ord. IX. apply to the service of such a writ; *Pollock* v. *Campbell*, *ubi supra*. If personal service of the writ cannot be effected, notwithstanding reasonable efforts to effect the same, and the writ has come to the knowledge of the defendant, or he wilfully evades service of the same, the proper course is to apply for an order for liberty to proceed as if personal service had been effected; see Bills of Exchange Act 1855 (18 & 19 Vict. c. 67), s. 1, and C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 17; and *post* pp. 816, 817. For form of application and of affidavit in support, see *post* Nos. 1500—1502.

(*l*) The affidavit must show that the writ was served within the jurisdiction; Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), s. 1.

(*m*) For form of memorandum of exhibit, see *ante* No. 723.

(*mm*) A copy of the writ of summons and of the indorsements thereon must be filed; see the Bills of Exchange Act (18 & 19 Vict. c. 67), s. 1.

(*n*) See form in Sched. (A) to the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), and Reg. Gen. M. T. 1855; R. S. C. Ord. IX. 13; and see *ante* No. 293.

(4.) *Application for Leave to Proceed as if Personal Service had been Effected.*

1500.

Motion paper for leave to proceed as if personal service of writ of summons had been effected (*v*).

Formal parts : see post No. 1570.

To move on behalf of the plaintiff, that he may be at liberty to proceed in this action in the same manner as if personal service of the writ of summons had been effected on the defendant A. B.

An affidavit in support accompanies.

1500a.

Summons for like leave (*v*).

Formal parts : see ante No. 881.

on the part of the plaintiff, that he may be at liberty to proceed in this action in the same manner as if personal service of the writ of summons had been effected on the defendant A. B.

1501.

Affidavit in support (*w*).

Formal parts : see ante No. 693.

1. On the —— day of ——, 187—, the writ of summons in this action was regularly issued out of the Chancery Division of this honourable Court, against the above-named defendant at the suit of the above-named plaintiff, which writ of summons was in the form prescribed by "The Summary Procedure on Bills of Exchange Act, 1855," and had subscribed thereto the memoranda

(*v*) If personal service of a writ of summons issued under the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), cannot be effected, no order for substituted or other service, or for the substitution of notice for service, can be made under R. S. C. Ord. IX. 2 ; *Pollock* v. *Campbell*, 1 Ex. D. 50 ; but the plaintiff must apply for an order for leave to proceed as if personal service had been effected ; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 17, and Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67, s. 1). Such an order will only be made if it appear to the Court or Judge (1) that reasonable efforts have been made to effect personal service ; (2) either (*a*) that the writ has come to the knowledge of the defendant, or (*b*) that he wilfully evades service of the writ ; and (3) that the defendant has not appeared ; C. L. P. Act, 1852, s. 17. For form of affidavit in support of the application, see *post* No. 1501, and Chitty, Forms, p. 58.

(*w*) The affidavit must prove that reasonable efforts have been made to effect personal service, and either that the writ has come to the defendant's knowledge, or that he wilfully evades service of the same. As to what is sufficient proof of this, see Chitty, Forms, 58—61. Under the old practice it was usual "to require at least three attempts, on different days, to serve the writ, by calling at the defendant's residence, when known, and stating the purpose of the call, and on each of the first and second calls to make an appointment, and state a day when the next call will be made, and leaving a copy of the writ on the last of the calls. But there were many cases where the adoption of a different course of proceeding, and the making of less than three attempts at service might suffice. The act requires only that reasonable efforts should

and had indorsed thereon the indorsements required by the said Act, and by the General Rules of the 26th November, 1855, and by the Rules of the Supreme Court. A true copy of the said writ of summons, and of the indorsements thereon, is now produced and shown to me, and marked A (*x*).

2. [*Here show that reasonable efforts have been made to effect personal service of the writ on the defendant, and also state such facts as will satisfy the Court or Judge either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same. See note* (*w*) *supra.*]

3. I made all reasonable efforts, and used all due means in my power, to serve the said defendant personally with a true copy of the said writ of summons, but I have not been able to do so, and, for the reasons aforesaid, I verily believe that the said writ has come to the knowledge of the defendant [*Or*, that the said defendant wilfully evades service of the said writ].

4. No appearance to the said writ of summons has been entered by or on behalf of the said defendant, as I know from having on the —— day of ——, 187—, searched in the cause book kept in the office of the Clerks of Records and Writs [*Or*, kept in the District Registry at ——], out of which the said writ of summons was issued (*y*).

[*See* No. 287 *ante.*]

1502. Separate affidavit of no appearance having been entered (*y*).

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be made to effect the service, and if these have been made, and it can be made to appear by any means that the writ has come to the defendant's knowledge, or that he wilfully evades the service of it, that will do;" Chitty, Forms, p. 58, note (*a*), citing *Barringer* v. *Handley*, 12 C. B. 720; *Gorringe* v. *Terrewest*, 2 L. M. & P. 12. It must also be proved that the defendant has not appeared; for separate form of affidavit of non-appearance, see *post* No. 1502.

(*x*) For form of memorandum of exhibit, see *ante* No. 723.

(*y*) As to the searches for appearance, which are necessary, see *ante* No. 286 note (*o*). For separate affidavit as to search for appearance, see *ante* No. 287.

1503. Judgment by default for want of appearance (*d*).

(5.) *Judgment by Default for want of Appearance.*

187—. — No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

The —— day of ——, in the year of Our Lord one thousand eight hundred and seventy——(*e*).

England to wit. A. B., in his own person [*Or*, by X. Y., his solicitor], sued out a writ against C. D. and E. F., indorsed as follows:

[*Here copy indorsement of plaintiff's claim.*]

And the said C. D. and E. F. have [*Or*, the said C. D. has (*f*)] not appeared.

Therefore it is considered that the said A. B. do recover against the said C. D. and E. F. [*Or*, against the said C. D (*f*)] £—— and costs to be taxed.

1504. Setting aside judgment by default for want of appearance (*g*).

[*Same as* Nos. 386 *to* 389 *ante.*]

(*d*) This is the form given in Sched. B to the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67). It has, however, been generally superseded by form 1 in App. (D) to the Rules of the Supreme Court; Seton, ed. 4, 7; see the form in question, *supra* No. 350. As to the mode of entering judgment, see *ante*, note (*b*) to No. 350. In addition to the documents there mentioned, a copy of the writ of summons and of the indorsements thereon must be filed; 18 & 19 Vict. c. 67, s. 1; and, where the plaintiff has not been able to effect personal service of the writ, he must, instead of the affidavit of service there mentioned, file an order for leave to proceed as if personal service had been effected. As to the date of the judgment and the fee payable on entering the same, see *ante*, note (*b*) to No. 350.

(*e*) Here fill in the date of entering judgment; see *ante*, note (*b*) to No. 350.

(*f*) By the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), s. 6, one writ of summons may be issued against all or any number of the parties liable on a bill or note, and such writ shall be the commencement of an action or actions against the parties therein named respectively, and all subsequent proceedings against such respective parties shall be in like manner, as far as may be, as if separate writs of summons had been issued.

(*g*) See 18 & 19 Vict. c. 67, s. 3; and notes to Nos. 386 to 389 *ante*.

(6.) *Appearance by Defendant* (*t*).

1505. Motion paper for leave to appear (*u*).

Formal parts: see post No. 1570.

To move on behalf of the defendant [*Or*, of the defendant A. B.], that he may be at liberty to appear to the writ of summons in this action, and to defend the said action [*If so:* upon payment into Court to the credit of this action, B. A. *v.* A. B., 1877, A. 100, of the sum of £——, being the amount indorsed upon the writ of summons in this action (*v*)].

A copy of the writ and an affidavit in support accompany.

1506. Summons for like purpose (*u*).

Formal parts: see ante No. 881.

on the part of the defendant A. B., that he may be at liberty to appear [*Continue as in last form, to end*].

1507. Affidavit in support (*w*).

Formal parts: see ante No. 693.

1. On the —— day of ——, 187—, I was served with the paper writing now produced and shown to me and marked A. (*x*), and which purports to be a copy of a writ of summons, and of the

(*t*) As to entering a conditional appearance, see *ante* Nos. 301, 302. As to setting aside the writ of summons or service thereof, see *ante* Nos. 315 to 318.

(*u*) The application must be made within twelve days after service of the writ; 18 & 19 Vict. c. 67, s. 2. The application is *ex parte*, and should in the first instance be made to a Judge at Chambers; Chitty, Forms, 618 note (*d*). Where the defendant does not pay into Court the sum indorsed on the writ, the application must be supported by an affidavit, satisfactory to the Judge, disclosing a legal or equitable defence, or such facts as would make it incumbent upon the holder to prove consideration, or such other facts as the Judge may deem sufficient to support the application; 18 & 19 Vict. c. 67, s. 2. The order will be made on such terms as to security and otherwise, as to the Judge may seem fit; *Ibid.*, s. 2. Notwithstanding leave granted, and appearance entered in pursuance thereof, the plaintiff may apply to rescind the leave and set aside the appearance; *Agra and Masterman's Bank* v. *Leighton*, L. R. 2 Ex. 56. For form of application, see *post* No. 1510.

(*v*) Where the defendant is willing to bring into Court the whole sum indorsed on the writ, he is entitled to the order; see 18 & 19 Vict. c. 67, s. 2; in such case, no affidavit showing a defence on the merits is necessary. For the practice on payment into Court, see Chancery Funds Consolidated Rules, 1874, rules 28, 30; *post*, note (*o*) to No. 1974.

(*w*) No affidavit showing a defence on the merits, is necessary where the defendant is willing to bring into Court the whole sum indorsed on the writ; see last note (*v*).

(*x*) For form of memorandum of exhibit, see *ante* No. 723.

indorsements thereon, in the form prescribed by "The Summary Procedure on Bills of Exchange Act, 1855," issued out of this honourable Court on the —— day of ——, 187—.

2. I am advised and verily believe that I have a good defence to this action upon the merits.

3. [*Here state the facts relied on by way of defence. They should be facts which disclose a legal or equitable defence, or such as would make it incumbent on the holder to prove consideration* (*y*).]

4. [*State means of knowledge.*]

1508.

Memorandum of appearance (*z*).

Formal parts: see No. 294 *ante.*

Enter an appearance for —— in this action, pursuant to order dated the —— day of ——, 187— [*Conclude as in* No. 294 *ante.*]

1509.

Notice of appearance.

Formal parts: see ante No. 21.

Take notice that pursuant to order made in this action, and dated the —— day of ——, 187—, I have this day [*Conclude as in* No. 295 *ante*].

(7.) *Setting aside the Appearance.*

1510.

Notice of motion or summons to discharge an order giving leave to appear to a writ of summons issued under the Bills of Exchange Act, and to set aside the appearance entered under such order.

Formal parts: see post No. 1571, *or ante* No. 881.

on the part of the plaintiff, that the order made in this action, and dated the —— day of ——, 187—, whereby it was ordered that the defendant should be at liberty to appear to the writ of summons in this action, and to defend this action, may be discharged on the ground that [*Here specify the ground on which it is sought to discharge the order, and set aside the appearance, as thus:*]

the affidavit of ——, on which the said order was made, did not disclose a legal or equitable defence to this action, or such facts as make it incumbent on the holder of the bill [*Or*, note] mentioned in the writ of summons in this action to prove consideration (*f*); *Or*,

(*y*) See 18 & 19 Vict. c. 67, s. 2.

(*z*) The appearance is entered in the usual manner, see *ante* pp. 146, 147. When the defendant to an action commenced by a writ of summons issued under the Bills of Exchange Act, has obtained leave to appear, and has appeared thereto, the action proceeds in the ordinary way; *Norris* v. *Beazley*, 2 C. P. D. 80.

(*f*) Where the application is made upon this ground, the plaintiff should not file counter-affidavits denying the defence set up; if the affidavit filed on behalf of the defendant discloses what is *primâ facie* a real defence, the Court will not try the case on an application to discharge the order giving

the plaintiff is a holder of the bill [*Or*, note] mentioned in the writ of summons in this action for value, and without notice of the facts mentioned in the affidavit of ——, on which the said order was made, and that the facts mentioned in the said affidavit do not afford any defence to this action as against the plaintiff (*g*) ; *Or*,

the said order was obtained by the fraudulent conduct of the defendant (*h*) ; *or as may be ;*

And that the appearance entered under the said order for the said defendant to the writ of summons in this action may be set aside. And that the said appearance may be struck out of the Cause Book [*Continue as in* No. 390 *ante, to end*].

Section II.—Proceedings in an Action for a Partition (*a*).

1511. Summons to nominate commissioners of partition (*b*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*Or*, defendant A. B.], that the names of C. D., E. F., G. H., and I. K., may be inserted as the commissioners, in the commission of partition by the judgment [*Or*, order] dated the —— day of ——, 187—, directed to issue.

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leave to appear ; *Freebout* v. *Stevens*, 6 Jur. N. S. 101 ; 30 L. J. Exch. 1 ; *Brutton* v. *Thomas*, 1 F. & F. 377. But if the affidavit is upon the face of it defective in not disclosing any ground of defence, then an application should be made to set aside the order, and the appearance entered thereunder ; *Esdaile* v. *Ramsay*, 10 W. R. 20. The affidavit is sufficient if it discloses any ground of defence, however technical ; it need not go to the merits of the case ; *Casella* v. *Darton*, L. R. 8 C. P. 100.

(*g*) See *per* Bramwell and Channell, BB., in *Agra and Masterman's Bank* v. *Leighton*, L. R. 2 Exch. 56. In this case, there should be an affidavit showing that the plaintiff is a holder for value, and without notice of the facts mentioned in the affidavit of the defendant, and which afford a good defence as between the parties to the bill or note.

(*h*) See *Pollock* v. *Turnock*, 1 H. & N. 741.

(*a*) As to the proceedings in partition actions, see Dan. Pr. 1019—1033 ; it seems to be now more usual to direct an inquiry at Chambers than to issue a commission ; see *Spike* v. *Harding*, 7 Ch. D. 871 at p. 876. As to partitions at Chambers, see Dan. Pr. 1030 ; and *post* Nos. 1527, 1528. For form of judgment for a partition, see *post* No. 1527. As to service of notice of the judgment, see 31 & 32 Vict. c. 40, s. 9 ; and *ante* Nos. 20 to 39. As to partition, see the Partition Act, 1868 (31 & 32 Vict. c. 40) ; and the Partition Act, 1876 (39 & 40 Vict. c. 17) ; Morgan, 289—293. As to proceedings under a judgment for sale made in a partition action, see *ante* Nos. 1100 to 1185.

(*b*) See Dan. Pr. 1023. As to the nomination of the commissioners, where the parties cannot agree, see *Ibid.*

1512.
Præcipe for a commission of partition.

In the High Court of Justice,
Chancery Division.
[*Reference to the record.*]
A. v. B. } Seal a commission of partition, directed to [*Insert the names of the commissioners*].
Returnable without delay [*or as the case may be*].
Order [*to issue the commission*] dated —— day of ——, 187—.
Tested —— day of ——, 187—.
[*Name, &c., of solicitor or party issuing the writ, as in* No. 92 *ante.*]

1513.
Commission of partition (*d*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To [*Insert the names of not less than four commissioners* (*e*)], greeting :

Whereas by a certain judgment [*Or*, order] made by our High Court of Justice on the —— day of ——, 187—, in a certain action there depending, wherein A. B. is plaintiff, and C. D. is defendant, it was (amongst other things) adjudged [*Or*, ordered] that [*Insert so much of the mandatory part of the judgment or order as directs the issuing of the commission, the partition, and the examination of witnesses* (*f*)] : Know ye, therefore, that we in confidence of your prudence and fidelity have appointed you and, by these presents, in pursuance of the said judgment [*Or*, order] do give unto you, any two or more of you, full power and authority, and hereby command you, that you, or any two or more of you, do assemble and meet together at certain proper and convenient times and

(*d*) The commission must be engrossed on parchment ; and be impressed with a 20*s.* stamp ; Ord. as to Court Fees, Oct. 1875 ; Ord. as to Fees, April, 1876 ; Wilson, 506, 522. It will be sealed at the Record and Writ Clerks' office, on production of the judgment or order directing it to issue. As to the preparation and sealing of the commission, see Dan. Pr. 1023. For the method of executing the commission, and making the partition, see Dan. Pr. 1023—1029.

(*e*) See Dan. Pr. 1023.

(*f*) Where a preliminary inquiry has been prosecuted at Chambers under the judgment, a statement of the Chief Clerk's certificate of the result should be here inserted, and the subsequent parts of the writ be varied accordingly, see Dan. Pr. 1023.

places, by you, or any two or more of you, to be for that purpose appointed; and that you do from thence go to, enter upon, walk over, and survey the said estate called the Whitehead estate [*or as it may be named in the judgment*] in the said judgment, and in the pleadings in the said action more particularly mentioned (*g*); and that you do thereby, and by such other lawful ways and means as you shall think proper, and according to the best of your skill, knowledge, and judgment, make a fair partition, division, and allotment thereof, and separate and divide the same [*Insert the direction from the judgment or order as to how many parts the estate is to be divided into, and to whom such parts or shares are to be allotted*], according to the true intent and meaning of the said in part recited judgment. And for the better making such partition, division, and allotment, we do hereby also authorise and empower you, or any two or more of you, diligently to examine all such witnesses as you shall see occasion [*If so*, upon such interrogatories in writing or otherwise, as you shall deem necessary (*h*)]; and therefore we command you, that on certain days, and at certain places to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine each of them on their respective corporal oaths, affirmations or declarations first taken before you, or any two or more of you, upon the Holy Evangelists, or in such other solemn manner as is or may be authorised by law; and that you do take their examinations, and reduce them into writing on paper (*i*); and when you shall have so done, you, or any two or more of you, are to make a certificate of such partition, division, and allotment, and all the proceedings in the premises, and send them, together with this writ, and the depositions of such witnesses (if any) as shall be examined by you touching the premises, unto us in our said High Court of Justice [*If no return day is named in the judgment, add:* without delay], under the hands and seals of you, or any two or more of you, distinctly and plainly set. Witness [*&c.: conclude as in* No. 93 *ante*].

1514. Indorsement on the commission.

By Order of Court.
A.
v.
B.
Commission of Partition.
[*Name, &c., of solicitor or party issuing the writ, as in* No. 94 *or* No. 95 *ante.*]

(*g*) See Dan. Pr. 1025, 1026.

(*h*) The words within brackets should only be inserted in cases where the judgment directs an examination upon interrogatories.

(*i*) See Ord. 6 Mar. 1860, rule 16.

1515. *Præcipe* for *subpœna* for attendance of witnesses (*l*).

[*Same as* No. 626 *ante*.]

1516. The *subpœna* (*m*).

[*Proceed as in* No. 627 *ante*, *to* greeting, *and continue* :]

We command you [*If more than one, add:* and every of you] that, laying all other matters aside, and notwithstanding any excuse, you personally be and appear before E. F. and G. H., commissioners named in a commission issued to them for that purpose, at such time and place as the bearer hereof shall by notice in writing appoint, to testify the truth according to your knowledge in a certain action now depending in our High Court of Justice, wherein A. B. is plaintiff, and C. D. is defendant,

Or, wherein A. B. and others [*Or*, another], are plaintiffs, and C. D. and others [*Or*, another] are defendants,

on the part of the plaintiff [*Or*, defendant A. B. ; *or as may be*].

[*In the case of a subpœna duces tecum* (*n*), *add:*] and that you then and there bring with you and produce [*Specify the documents to be produced*].

And hereof fail not at your peril. Witness [*&c.: conclude as in* No. 627 *ante*].

1517. Indorsement on the *subpœna* (*o*).

[*Same as* No. 94 *or* No. 95 *ante*.]

(*l*) See Dan. Pr. 1023 ; and Cons. Ord. XXVIII. 1. As to the power of the commissioners to summon witnesses, and the mode of examination, see Dan. Pr. 1023, 1024.

(*m*) See Dan. Pr. 1023 ; and note (*d*) to No. 627 *ante*. The form here given is prescribed by Cons. Ord. XXVIII. 2, and Sched. E, No. 3, subject to such alterations and variations as circumstances may require ; Cons. Ord. XXVIII. 2. As to the number of witnesses that may be included, see *Ibid.*, rules 3, 4 ; and *ante* No. 627 note (*d*).

(*n*) As to *subpœna duces tecum*, see *ante* No. 567, and notes thereto. As to the degree of particularity with which the documents must be described, see *Attorney-General* v. *Wilson*, 9 Sim. 526 ; *Newland* v. *Steer*, 11 Jur. N. S. 596 ; 13 W. R. 1014, V.-C. K. ; *Lee* v. *Angas*, L. R. 2 Eq. 59, V.-C. W. ; and *ante* No. 567. As to the power of the commissioners to compel, and mode of compelling, the production of documents, see Dan. Pr. 1024, 1025.

(*o*) See Dan. Pr. 1023 ; and Cons. Ord. III. 2, 5.

1518. Notice to the witness of time and place of attendance.

Formal parts : see ante No. 21.

Take notice that you are required to attend before [*Insert names of acting commissioners*], the commissioners acting under the commission of partition issued in this action, at [*State where; as thus :*] the Red Lion Inn, Wells, in the county of Somerset, on ——, the —— day of ——, 187—, at —— of the clock in the —— noon, to give evidence on the part and behalf of the above-named plaintiff [*Or*, defendant A. B. ; *or as may be*].

1519. Oaths and affirmations of witnesses (*p*).

[*Same as* Nos. 646—660 *ante.*]

1520. Summons for further time to file a certificate of partition (*q*).

Formal parts : see ante No. 881.

on the part of the plaintiff, that the time for filing the certificate or return of the commissioners, to the commission of partition issued pursuant to the judgment [*Or*, order] dated the —— day of ——, 187—, may be enlarged to the —— day of —— next.

1521. Certificate of partition (*r*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

To Her Majesty's High Court of Justice.

We, whose names are hereunto subscribed, being two [*or as may be*] of the commissioners named in the commission hereunto annexed, do humbly certify unto this honourable Court, as follows :

1. We did, on the —— day of ——, 187—, in pursuance of the said commission, assemble and meet together at ——, in the county of ——, and we did from thence go to [*&c. : Follow the*

(*p*) See Dan. Pr. 1023, and notes to Nos. 646 to 660 *ante.*

(*q*) See *Howard* v. *Barnwell*, V.-C. S. at Chambers (by consent), 29 Jan. 1864, Reg. Lib. A. 96.

(*r*) See Dan. Pr. 1028. There is no prescribed form of certificate or return to a commission of partition ; as a rule, it should follow, as nearly as may be, the language of the commission. As to separate certificates, where the commissioners disagree, see Dan. Pr. 1028, 1029.

language of the writ; and give a clear and accurate statement of the course of proceeding actually pursued].

[*If witnesses were examined, add here:*] And we have examined upon oath, affirmation, or declaration the following witnesses, that is to say [*Set forth the names of the witnesses. If any of the parties to the action were examined as witnesses, only their names need be stated; in other cases, the addresses of the witnesses should also be set forth*]: whose examinations we have taken and reduced into writing on paper (*s*); and we have annexed such examinations to this our return.

2. We find that the said hereditaments and premises consist of the particulars set forth in the schedule hereunder written; and such particulars, for the sake of more complete description, are also delineated in the map or plan hereunto annexed marked A.

3. We have, according to the best of our skill, knowledge, and judgment, made a fair partition, division, and allotment of the said hereditaments and premises, and have divided the same into —— equal parts, and allotted the same to the parties in such proportions, manner, and form as by the said commission is directed.

4. One of such —— equal parts consists of the hereditaments and premises particularised in the first part of the said schedule hereto; and is distinguished on the said map or plan by a red colour. We have allotted, and do hereby allot, to the plaintiff A. B. the hereditaments and premises particularised in the said first part of the said schedule.

5. One other of such —— equal parts consists of the hereditaments and premises particularised in the second part of the said schedule hereto; and is distinguished on the said map or plan by a blue colour. We have allotted, and do hereby allot, to the defendant C. D., the hereditaments and premises particularised in the said second part of the said schedule.

[*Proceed in like manner, as to any other shares.*]

In testimony whereof, we have hereunto set our hands and seals, this —— day of ——, 187— (*u*).

E. F. (L. S.)
G. H. (L. S.)
I. K. (L. S.)
L. M. (L. S.)
} Commissioners.

The schedule above referred to.

[*Divide the schedule into parts, corresponding with the shares allotted.*]

(*s*) See Ord. 6 Mar. 1860, rule 16.

(*u*) The acting commissioners should also sign each schedule annexed to, or written under, the certificate, and each plan; but their signatures need not be attested; Dan. Pr. 1028.

1522.

The execution of this commission appears in the schedule hereunto annexed.

E. F. [*&c., as above*], Commissioners.

Return to be indorsed on the commission (*x*).

1523.

Formal parts: see post No. 1571.

on the part of the plaintiff [*Or*, defendant A. B.], that the paper writing filed in this action on the —— day of ——, 187—, and purporting to be the certificate or return of E. F. and G. H., to the commission of partition issued pursuant to the judgment [*Or*, order] in this action, dated the —— day of ——, 187—, may be quashed; and that such certificate may be taken off the file.

Notice of motion to quash the certificate (*y*).

1524.

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*Or*, defendant A. B.], for an order *nisi* to confirm the certificate, dated the ——, 187—, of E. F. and G. H., in pursuance of the commission of partition issued under the judgment [*Or*, order] dated the ——, 187—.

Motion paper for order *nisi* to confirm the certificate (*z*).

1525.

Formal parts: see post No. 1570.

To move on behalf of the plaintiff [*Or*, defendant A. B.], that the order *nisi* dated the ——, 187—, to confirm the certificate of the commissioners of partition, may be made absolute.

The order, affidavit of service, and certificate of no cause shown, accompany.

Motion paper for order absolute to confirm certificate (*a*).

(*x*) This return must be indorsed on the commission, and signed by the acting commissioners; Dan. Pr. 1028. The several documents should be annexed to the commission in the following order: (1.) The commission; (2.) The certificate; (3.) The plans; and (4.) The depositions; and closed up and sealed by the acting commissioners; and transmitted by them to the Record and Writ Clerks' office, to be there filed; see Dan. Pr. 1029.

(*y*) See Dan. Pr. 1029. For order in like case, see Seton, ed. 3, 583, No. 17. As to directing a new commission to issue, see *Ibid.*; Dan. Pr. 1029.

(*z*) See Dan. Pr. 1029. For order in like case, see Seton, ed. 3, 583, No. 15. In *Howard* v. *Barnwell*, V.-C. S. at Chambers, 27 Feb. 1865, Reg. Lib. A. 510, the certificate was made absolute in the first instance, on summons, by consent; and in *Robinson* v. *Pearson*, V.-C. M. at Chambers, 12 Jan. 1869, Reg. Lib. B. 23, a like order was made on the application of all parties.

(*a*) See Dan. Pr. 1030. For order in like case, see Seton, ed. 3, 583, No. 16.

1526.
Affidavit in support (*b*).

[*Same as* No. 1266 *ante.*]

1527.
Judgment for partition at Chambers of a settled estate, vested in adults and an infant (*c*).

[*Date—title—and introduction.*]

This Court doth order that the following inquiries be made, namely:

1. An inquiry what parts of the freehold lands and hereditaments devised by the will of S. S. F., deceased, the testator in the pleadings named, are now held in common.

2. An inquiry what sum is due to the plaintiffs in respect of rents and profits of the lands and hereditaments which shall be certified to be so held in common, and from whom.

And this Court doth declare that one moiety of the lands and hereditaments which shall be certified to be so held in common is subject to the limitations contained in the indenture of the 13th August, 1863, in the pleadings mentioned; and that the other moiety thereof is subject to the limitations contained in the will of S. S. F., deceased, in the pleadings named.

And this Court doth order that the said lands and hereditaments be partitioned and allotted by the Judge: having regard to the said declaration; and that one moiety thereof be allotted to the uses of the said indenture of the 13th August, 1863; and that the other moiety thereof be allotted to the uses of the said will of the said S. S. F.; and be held and enjoyed in severalty, by the persons entitled thereto under the said indenture and will respectively.

And this Court doth declare that upon the said partition being made, the defendant J. S. F. will be a trustee, within the meaning of the Trustee Act, 1850, of the moiety of the estate to be conveyed to the uses of the said indenture; and doth appoint the defendant A. E. F. to convey the estate and interest of the said J. S. F. in such moiety accordingly; and doth order that the plaintiffs do execute a conveyance of one moiety of the said lands and hereditaments to the uses of the said will of the said S. S. F.; and that the defendant A. E. F. do execute, on behalf of herself and the said defendant J. S. F., a conveyance of the other moiety of the said lands and hereditaments to the uses of the said indenture of the 13th August, 1863: such conveyances to be settled by the Judge.

And this Court doth declare that the costs of the defendants of this action are to be a charge upon the hereditaments to be allotted and conveyed to the uses of the said will of the said

(*b*) See Dan. Pr. 1030.

(*c*) *Rothery* v. *Fitzsimons*, M. R., 27 Jan. 1866, Reg. Lib. B. 227. As to partitions at Chambers, see Dan. Pr. 1030. It seems to be now more usual to direct a partition at Chambers, than to issue a commission; see *Spike* v. *Harding*, 7 Ch. D. 871 at p. 876. For form of certificate of partition, see *post* No. 1528.

S. S. F.; and the defendants are to be at liberty to apply in Chambers as to raising such costs, by a sale or mortgage of the hereditaments so charged therewith. And this Court doth order that the costs of the said partition be borne by the parties in equal moieties.

1528.

Chief Clerk's certificate of the result of the proceedings under the judgment (*d*).

[*Title.*]—In pursuance [*&c.: as in ante* No. 1238]. The plaintiffs and defendants have attended by their respective solicitors.

1. Such of the freehold lands and hereditaments devised by the will of S. S. F., deceased, the testator in the pleadings named, as are now held in common, consist of the particulars set forth in the schedule hereto.

The evidence produced on this inquiry consists of, *&c.*

2. There is not any sum due to the plaintiffs in respect of rents and profits of the said lands and hereditaments so held in common as aforesaid, or any of them.

The evidence produced, *&c.*

The said lands and hereditaments have been partitioned and allotted by the Judge: having regard to the declaration contained in the said judgment. The lands and hereditaments so partitioned and allotted are delineated on the plan marked A., verified by the affidavit of J. H., filed ——, 187—, and which plan is annexed to, and is to be filed with, this certificate.

One moiety of the said lands and hereditaments has been allotted to the uses of the indenture of the 13th August, 1863, in the said judgment mentioned; and such moiety consists of the particulars set forth in the first part of the schedule hereto; and is distinguished on the said plan by a blue colour.

The other moiety of the said lands and hereditaments has been allotted to the uses of the will of S. S. F., in the said judgment named; and such moiety consists of the particulars set forth in the second part of the schedule hereto; and is distinguished on the said plan by a red colour.

A thorn fence is to be erected across the field called Little Rakes, numbered 715 in the schedule hereto, from the point marked A. to the point marked C. on the said plan, in order that such fence may divide the portion of the said field comprised in the first part of the said schedule, and coloured blue on the said plan, from the portion thereof comprised in the second part of such schedule, and coloured red on the said plan. The persons to whom the lands and hereditaments comprised in the first part of the said schedule have been allotted, as aforesaid, are to bear one moiety of the expense of erecting the said fence, and are for ever hereafter to maintain so much of the said fence as, when erected, will extend from the point marked A. on the said plan, to the point marked B. thereon. The persons to whom the lands and hereditaments com-

(*d*) See *Rothery* v. *Fitzsimons* (filed 11 Feb. 1867); *ante* No. 1527, and note (*c*).

prised in the second part of the said schedule have been allotted, as aforesaid, are to bear the other moiety of the said expense, and are for ever hereafter to maintain so much of the said fence as, when erected, will extend from the point marked B. on the said plan to the point marked C. thereon.

The evidence, *&c.*

A conveyance of one moiety of the said lands and hereditaments to the uses of the said will of the said S. S. F., and a conveyance of the other moiety thereof to the uses of the said indenture of the 13th August, 1863, have been settled. Such conveyances consist of two parts of an indenture intended to be made between the plaintiffs C. R., and E. his wife, of the first part, the defendant A. E. F., of the second part, and A. H., of W., gentleman, of the third part; and each of such parts is identified by my signature in the margin of the engrossment thereof.

The evidence produced, *&c.*

THE SCHEDULE ABOVE REFERRED TO.

First Part.

Number on plan.	Name of field.	Quantity.

Second Part.

(*Repeat as above.*)

Section III.—Proceedings in an Action to settle Boundaries (*e*).

1528a. [*See* Nos. 1511 *to* 1526 *ante* (*f*).]

(*e*) As to the jurisdiction in actions to settle boundaries, see Dan. Pr. 1033, note (*f*); Seton, ed. 3, 590, 591. As to the proceedings in actions to settle boundaries, see Dan. Pr. 1033—1035; for forms of judgments, see Seton, ed. 3, 588—591; it seems to be now more usual to direct an inquiry at Chambers, than to issue a commission to ascertain boundaries; *Spike* v. *Harding*, 7 Ch. D. 871 at p. 876.

(*f*) A commission to settle boundaries is nearly in the same form as, and is made out, issued, executed, and returned in the same manner as a commission of partition; see Dan. Pr. 1033.

SECTION IV.—PROCEEDINGS IN A FORECLOSURE ACTION (*g*).

1529. Notice of motion for judgment under 7 Geo. 2, c. 20, s. 2 (*h*).

Formal parts : see post No. 1571.

on the part of the defendants that, upon the defendants admitting the mortgage securities in the indorsement of claim on the writ of summons [*Or*, in the statement of claim] in this action mentioned and the right and title of the plaintiffs thereunder, such judgment may be entered in this action as might have been entered therein had this action been regularly brought to trial.

1530. Proceedings under a judgment in a foreclosure action.

[*Same as* Nos. 1044 *to* 1055 *ante.*]

SECTION V.—PROCEEDINGS IN AN ACTION TO REDEEM (*j*).

1531. Proceedings under a judgment in a redemption action.

[*Same as* Nos. 1044 *to* 1055 *ante.*]

SECTION VI.—PROCEEDINGS IN AN ACTION FOR SPECIFIC PERFORMANCE (*k*).

1532. Proceedings under a judgment for specific performance.

[*Same as* Nos. 1003 *to* 1009 *ante.*]

(*g*) The proceedings down to judgment in a foreclosure action are the same as in an ordinary action; unless judgment is made in a summary manner on an application of the defendant under 7 Geo. II. c. 20, s. 2; see No. 1529, and note (*h*) thereto.

(*h*) By the statute 7 Geo. II. c. 20, s. 2, it is provided, that in any foreclosure action, the Court, upon application by the defendant or defendants having right to redeem, and upon his or their admitting the right of the plaintiffs, may and shall before the hearing make such order or judgment therein as the Court might have made had the action been regularly brought to a hearing. As to this enactment, see Dan. Pr. 855, and note (*r*); Chitty, Statutes, vol. iii. p. 442, *in notis;* Seton, ed. 3, p. 389. The application may be made as soon as the defendant has appeared.

(*j*) The proceedings down to judgment in an action to redeem are the same as in an ordinary action.

(*k*) The proceedings down to judgment in an action for specific performance are the same as in an ordinary action.

Section VII.—Proceedings in an Interpleader Action (*l*).

1533.
Affidavit of no collusion.

[*Same as* Nos. 252 *to* 256 *ante.*]

Section VIII.—Proceedings in an Action for Discovery only (*m*).

1534.
Motion paper by defendant for payment of his costs of action (*n*).

Formal parts: see post No. 1570.

To move on behalf of the defendant C. D. for an order for payment by the plaintiff of his costs of this action, the plaintiff's claim therein being for discovery only.

The plaintiff delivered interrogatories for the examination of the defendant on the —— day of ——, 187—, and the affidavit of the defendant in answer thereto was filed on the —— day of ——, 187—.

1535.
Petition, of course by defendant for like (*n*).

Formal parts: see post No. 1576.

The humble petition of the defendant C. D.

Showeth as follows:

1. The plaintiff, on the —— day of ——, 187—, delivered his statement of claim in this action, thereby claiming discovery only against your petitioner, and not claiming any relief against him.

2. On the —— day of ——, 187—, the plaintiff delivered interrogatories for the examination of your petitioner, and on the —— day of ——, 187—, your petitioner filed his affidavit in answer thereto.

Your petitioner therefore humbly prays that the plaintiff may be ordered to pay to your petitioner his costs of this action.

And your petitioner will ever pray, *&c.*

(*l*) See Dan. Pr. 1412—1418.

(*m*) As to actions for discovery only, see Dan. Pr. 1408—1412. Where the plaintiff's claim is for discovery only, the statement of claim must show it; R. S. C. Ord. XIX. 8.

(*n*) See Dan. Pr. 1411. For order in like case, see Seton, ed. 3, 1270, No. 5.

Section IX.—Proceedings in an Action to Perpetuate Testimony (*o*).

1536. Notice of motion by defendant, that plaintiff may proceed within a limited time (*p*).

Formal parts: see post No. 1571.

on the part of the defendant A. B., that the plaintiff may be ordered to proceed forthwith with this action; or, in default thereof, to pay to the said defendant his costs of this action.

1537. Motion paper by defendant for payment of his costs of the action (*q*).

Formal parts: see post No. 1570.

To move on behalf of the defendant A. B., for an order for the payment by the plaintiff of his costs of this action: which is instituted to perpetuate the testimony of witnesses only.

The plaintiff has examined his witnesses, but the defendant has not examined any witness.

1538. Petition of course for the like (*r*).

Formal parts: see post No. 1576.

The humble petition of the defendant A. B.

Showeth as follows:

1. The plaintiff delivered his statement of claim in this action on the —— day of ——, 187—, thereby seeking to perpetuate the testimony of witnesses only; and not claiming any relief against your petitioner.

2. Your petitioner has duly appeared in this action.

3. The testimony of the witnesses to examine whom this action was brought has been taken on behalf of the plaintiff; but no witness has been examined on behalf of your petitioner.

Your petitioner therefore humbly prays, that the plaintiff may be ordered to pay to your petitioner his costs of this action.

And your petitioner will ever pray, *&c.*

1539. Application for leave to use the evidence.

[*Same as* Nos. 591 *and* 592 *ante.*]

(*o*) As to actions to perpetuate testimony, see Dan. Pr. 1419—1422.
(*p*) See Dan. Pr. 713.
(*q*) See Dan. Pr. 1421.
(*r*) See Dan. Pr. 1421.

CHAPTER XXI.

SPECIAL CASE (*a*).

1540. Motion paper to appoint special guardian of lunatic, or infant (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of A. B., a person of unsound mind not so found [*Or*, an infant]; and of the Act 13th & 14th Victoria, chapter 35, intituled "An Act to diminish the delay and expense of proceedings in the High Court of Chancery in England."

To move for C. D., of [*residence and addition*], on behalf of the above named lunatic A. B., that the said C. D.

Or, To move on behalf of the above named infant A. B., that C. D., of [*residence and addition*],

may be appointed the special guardian of the said A. B., for the purpose of concurring in his name, and on his behalf, in a special case proposed to be stated for the opinion of this Court, as to [*State object of the case; as thus:*] the construction of the will of L. N., deceased: in which the said A. B. is interested.

An affidavit in support accompanies.

1541. Notice of motion for the like (*c*).

Title as in No. 1540 *ante: other formal parts, see post* No. 1571. on the part of C. D. [*&c.: Continue as in* No. 1540 *ante, to* interested].

1542. Affidavit in support of motion, in the case of a lunatic (*c*).

In the High Court of Justice,
Chancery Division.
[*Title as in* No. 1540 *ante.*]

We, E. F., of [*Place of business*], gentleman, the solicitor in this matter for the above named A. B., and B. E., of [*Continue as in* No. 141 *ante, to* make oath and say]:

(*a*) As to special cases, see Dan. Pr. 1701—1711; 13 & 14 Vict. c. 35, ss. 1—18, 30—35. As to stating a special case *in an action*, for the opinion of the Court upon a question of law, see R. S. C. Ord. XXXIV., and *ante*, pp. 438—443.

(*b*) See Dan. Pr. 1702; 13 & 14 Vict. c. 35, s. 5. For orders in like case, see *Collyer* v. *Collyer*, V. C. M. 10 Dec. 1866, Reg. Lib. A. 2771; *Re Malam*, V. C. J. 21 Jan. 1869, Reg. Lib. B. 113; and see Seton, ed. 4, p. 44, No. 5. Neither the motion paper or notice of motion, nor the affidavit in support, may be entitled in the matter of the special case; Dan. Pr. 1702, note (*q*).

(*c*) See Dan. Pr. 1702.

And first I the said E. F. for myself say, as follows:

1. The said A. B. is interested in the subject matter of a special case proposed to be stated for the opinion of this honourable Court, under the provisions of the above mentioned Act, as to the construction of the will of L. N., deceased [*or as may be*].

2. The said A. B. has not been found of unsound mind by inquisition, or other proceeding in lunacy [*or as may be*].

3. I know and am well acquainted with C. D., of [*residence and addition; as in the motion paper or notice of motion*], the person proposed to be appointed the special guardian of the said A. B., for the purpose of concurring in his name, and on his behalf, in the said special case.

4. The said C. D. is [*State degree of relationship to, or connection with the family of, the lunatic; as thus:*] the brother of the said A. B.; and has no interest in the subject matter of the said proposed special case, adverse to the interest therein of the said A. B.; and in my judgment and belief the said C. D. is a fit and proper person to be appointed such guardian as aforesaid.

5. [*Show means of knowledge.*]

And I the said B. E. for myself say, as follows:

6. I have been in actual practice [*Continue as in ante* No. 141, *par.* 6, *to the end of that form*].

Sworn [*&c.: see ante* No. 696 *or* 698].

1543. Affidavit in support of motion, in the case of an infant (*d*).

In the High Court of Justice,
Chancery Division.
[*Title as in* No. 1540 *ante.*]

I, E. F., of [*Place of business*], gentleman, the solicitor in this matter for the above named A. B., make oath and say as follows:

1. The said A. B. is interested [*Continue as in* No. 1542 *ante, to the end of par.* 1].

2, 3, 4. [*Same as ante* No. 1542, *pars.* 3. 4. *and* 5.]

Sworn [*&c.: see ante* No. 696].

1544. Formal parts of a special case (*e*).

In the High Court of Justice, 187—, B. No. .
Chancery Division.
[*Name of Judge* (*f*).]

Between [*Entitle the case as a cause between some or one*

(*d*) See Dan. Pr. 1702. For circumstances under which the affidavit may be dispensed with, see *Elwes* v. *Elwes*, 20 W. R. 480.

(*e*) See Dan. Pr. 1703. The case must be printed by the plaintiff, and signed by the several parties, or their solicitors, and filed by the plaintiff in the Record and Writ Clerks' office; R. S. C. Ord. XXXIV. 3; R. S. C. (Costs), Ord. IV. On filing the case a fee is payable of 10*s.* on the lower scale, and £1 on the higher scale, by means of a stamp impressed on the special case, or on a *præcipe* to be filed; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*f*) The case must be marked with the name of the Judge to whom the special case is to be attached; Dan. Pr. 1704; 13 & 14 Vict. c. 35, s. 32.

of the parties interested, or claiming to be interested, as plaintiffs or plaintiff, and the others of them as defendants (*g*)].

Special case stated for the opinion of Her Majesty's High Court of Justice, pursuant to the Act 13th & 14th Victoria, chapter 35, intituled An Act [*&c.: see ante* No. 1540.]

1. } [*State concisely, in numbered paragraphs, such facts and*
2. } *documents as are necessary to enable the Court to decide the*
3. } *questions raised by the case* (*h*).]

The questions submitted for the opinion of the Court are:

1. Whether, *&c.*
2. Whether, *&c.*

A. B., counsel for the plaintiffs.
C. D., counsel for the defendants (*i*).

NOTE.—This special case is filed by J. J., of Lincoln's Inn, in the county of Middlesex [*or as may be; see ante* No. 94], solicitor for the above named plaintiffs (*k*).

1545. Notice of filing the case (*l*).

Formal parts: see ante, No. 21.

Take notice that I have this day filed the special case in this cause.

1546. *Præcipe* for appearance (*m*).

In the High Court of Justice,
Chancery Division.
[*Reference to the record.*]

A. } Enter an appearance for A. B., to special case [*Or,*
v. } amended special case] at the suit of B. A.
B. }

Dated this —— day of ——, 187—.

[*Name, &c., of solicitor or party entering the appearance, as in* No. 92 *ante.*]

(*g*) As to the necessary parties to a special case, see Dan. Pr. 1703. In the title, lunatics and infants must be described as such, and their committees, guardians, or special guardians, be named therein; and where a married woman is named as a plaintiff, and her husband as a defendant, a next friend for her must be named in the title. The case must also show how the guardian, or special guardian, of a lunatic or infant was constituted; Dan. Pr. 1702, 1703; 13 & 14 Vict. c. 35, s. 7.

(*h*) See Dan. Pr. 1703; 13 & 14 Vict. c. 35, s. 8.

(*i*) As to counsel's signature, see Dan. Pr. 1703; 13 & 14 Vict. c. 35, s. 10. It seems that the signature of counsel is no longer necessary; *Hare* v. *Hare*, W. N. (1876) 44.

(*k*) See Dan. Pr. 378, 1704; Cons. Ord. III. 2, 5; 13 & 14 Vict. c. 35, s. 32.

(*l*) See Dan. Pr. 1704.

(*m*) *Ibid.*; 13 & 14 Vict. c. 35, ss. 10, 11. For the practice as to entering an appearance, see Dan. Pr. 460, 1704; and *ante*, pp. 146, 147.

1547.
Notice of appearance (*n*).

Formal parts: see ante No. 21.

Take notice that I have this day entered an appearance for the defendant A. B. to the special case [*Or*, amended special case] herein.

1548.
Registry of a special case as a *lis pendens* and satisfaction thereof (*o*).

[*See the following forms, ante.*]

Memorandum for the registry, or re-registry, as a *lis pendens*: No. 277.

Acknowledgment of satisfaction thereof: No. 278.

Petition of course, special petition, notice of motion, and summons, for the entry of satisfaction thereof: Nos. 279—281.

1549.
Motion paper to amend special case, by consent (*p*).

Formal parts: see post No. 1570.

To move on behalf of all parties, that the plaintiff may be at liberty to amend the special case herein as he may be advised.

The case has not been set down for hearing.

1550.
Petition of course for the like (*r*).

Formal parts: see post No. 1576.

The humble petition of the plaintiff.

Showeth as follows:

1. Your petitioner lately filed a special case in this cause against the defendants: who have appeared thereto; but the said case has not been set down for hearing.

2. Your petitioner is now desirous to amend the said case.

Your petitioner therefore humbly prays, that, by consent of the defendants (*s*), he may be at liberty to amend the said special case, as he may be advised.

And your petitioner will ever pray, &c.

(*n*) See Dan. Pr. 460, 1704.

(*o*) *Ibid.*, 1704; and notes to Nos. 277—281 *ante*.

(*p*) For order in like case, on motion for all parties, see *Fletcher* v. *Fleete* V. C. S., 19 Feb. 1864, Reg. Lib. A. 281. As to amending a special case, generally, Dan. Pr. 1704; and at the hearing, Dan. Pr. 1708.

(*r*) For order in like case, see *Mure* v. *Mure*, M. R., 2 Dec. 1809, Tells' Lib.; and see Dan. Pr. 1959.

(*s*) For form of consent, see *post* No. 1577.

1551.
Præcipe for amendment of a special case (*t*).

[*Short title and reference to the record.*]
For amending special case.
C. D., plaintiff's solicitor [*Or*, agent].

1552.
Certificate of Record and Writ Clerk to set down special case, where no disability (*u*).

187—, B. No.
In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
A. B. *v.* C. D. [By special case.]
These are to certify that this cause is in a fit state to be set down for hearing: as appears by my book.

1553.
Indorsement thereon (*u*).

All parties are *sui juris*.
X. Y., plaintiff's solicitor.
——, 187—,

1554.
Notice of motion to set down special case, where there is a disability (*y*).

Formal parts: see post No. 1571.
on the part of the plaintiff, that he may be at liberty to set down for hearing the special case filed in this cause.
An affidavit in support accompanies.

1555.
Certificate of Record and Writ Clerk, in support (*z*).

Formal parts: see ante No. 1552.
These are to certify, that the special case in this cause has been duly filed, and that appearances have been entered thereto for all the defendants: as appears by my book.

(*t*) See Dan. Pr. 1705. As to when the record can be amended, and how, and when a reprint must be filed, see *Ibid.* No fee seems to be payable on amending a special case; see Ord. as to Court Fees, Oct. 1875. As to a new appearance by the defendant to an amended case, see Dan. Pr. 1705.

(*u*) See Dan. Pr. 1706. For the practice as to setting down a special case where all parties are *sui juris*, see Dan. Pr. 1707; 13 & 14 Vict. c. 35, s. 12; Reg. Regul. 15 Mar. 1860, rule 8.

(*y*) See Dan. Pr. 1706. For orders in like case, see *Admutt* v. *Wright*, M. R., 11 May, 1865, Reg. Lib. A. 887; *Hollis* v. *Allan*, V. C. K., 14 Dec. 1865, Reg. Lib. A. 2430; *Savage* v. *Snell*, V. C. J., 16 June, 1870, Reg. Lib. B. 1642; and see Seton, ed. 4, p. 44, No. 6. As to the persons to be served with the notice, see Dan. Pr. 1706; 13 & 14 Vict. c. 35, s. 13; and for the practice generally as to setting down a special case where any party to it is under disability, see Dan. Pr. 1706, 1707; 13 & 14 Vict. c. 35, ss. 12, 13; Reg. Regul. 15 Mar. 1860, rule 8. For form of affidavit of service of the notice, see *post* No. 1573.

(*z*) See Dan. Pr. 1706, note (*f*).

1556. Summons for deposit in Court of documents referred to in the case (*a*)

Formal parts: see ante No. 881.
on the part of the plaintiff [*Or*, defendant], that the defendant [*Or*, plaintiff] may be ordered, within (seven) days after service, to produce and leave with the Clerk of Records and Writs the indenture dated the —— day of ——, 187— [*or as may be*], admitted by the special case filed in this cause to be in his possession; and that the parties to this cause, their solicitors and agents, may be at liberty to inspect and peruse the said document, and take copies and abstracts thereof, and extracts therefrom, as they may be advised; and that the said document may be produced by the Clerk of Records and Writs upon the hearing of the said special case, as the parties to this cause, or either of them, may require.

1557. *Præcipe* for *subpœna* to hear judgment (*b*).

In the High Court of Justice, Chancery Division. 187—, B. No. .

B. *v.* D. } Seal a *subpœna* to hear judgment on behalf of the plaintiff [*or*, defendant C. D.] directed to the defendant [*Or*, plaintiff.]

Returnable on the —— day of ——, 187—.

Dated —— day of ——, 187—.

[*Name, &c., of solicitor or party issuing the writ: see ante* No. 92.]

1558. The *subpœna* (*c*).

[*Proceed as in* No. 93 *ante, to* "greeting;" *and continue:*]
We command you [*if more than one, add:* and every of you] that you appear before his lordship the Master of the Rolls [*Or,*

(*a*) See Dan. Pr. 1710; 13 & 14 Vict. c. 35, s. 18; R. S. C. Ord. XXXI. 11. As to the discovery and inspection of documents in general, see *post*, pp. 919—942. As to the deposit, production, and identity of documents for the hearing, see Dan. Pr. 1710.

(*b*) See 13 & 14 Vict. c. 35, s. 18; Dan. Pr. 831—834, 1707; Cons. Ord. XXI. 1—5; XXXIII. 10 (3). The *præcipe* must bear an impressed stamp of 2*s.* 6*d.*, if the proceeding be on the lower scale, and of 5*s.* if the proceeding be on the higher scale; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522. On setting the case down for hearing, a fee is payable of £1 on the lower scale, and £2 on the higher scale, by means of a stamp impressed on the form provided for the purpose; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*c*) See Dan. Pr. 831; Cons. Ord. XXVIII. 2, and Sched. E, No. 1. Each *subpœna* may contain the names of three persons when necessary or required: husband and wife being counted as one; Dan. Pr. 831; Cons. Ord. XXVIII. 3. If the writ is issued at the plaintiff's instance, it should be addressed to the defendants; if issued at the defendants' instance, it should be addressed to the plaintiff and to the co-defendants. As to the fee payable on issuing the *subpœna*, see note (*b*) to No. 1557 *ante*. As to correcting errors in the *subpœna*, see Dan. Pr. 833; Cons. Ord. XXVIII. 5; and *ante*, note (*d*) to No. 627.

the Vice-Chancellor ——; *or as may be*] on the —— day of —— (*d*) next, or whenever thereafter a certain cause now depending in our High Court of Justice wherein A. B. is plaintiff and C. D. is defendant (*e*)

Or, wherein A. B. and another [*Or*, others] are plaintiffs and C. D. and another (*Or*, others) are defendants (*e*)

shall come on for hearing, then and there to receive and abide by such judgment as shall then or thereafter be made and pronounced: upon pain of judgment being pronounced against you by default.

Witness [*&c.; Conclude as in* No. 93 *ante*].

1559.

Indorsement thereon (*f*).

[*Same as* No. 94 *or* No. 95 *ante.*]

1560.

Affidavit of service of the *subpœna* (*g*).

Formal parts: see ante No. 693.

1. On the —— day of ——, 187 —, I served the defendant, C. D.

Or, Mr. E. F., the solicitor in this cause for the defendant, C. D. (*h*)

with a *subpœna*, dated the —— day of ——, 187—, issuing out of and under the seal of this Honourable Court, by delivering to and leaving with

the said defendant C. D. personally at [*state where*]; *Or*,

the wife [*Or*, son; *Or*, servant] of the said C. D. at his address for service, situate at [*state where*]; *Or*,

the said Mr. E. F. personally at [*state where*]; *Or*,

the clerk [*Or*, servant] of the said Mr. E. F., at his address for service, situate at [*state where*];

a true copy of the said *subpœna* and of an indorsement thereon, in the form prescribed by the General Orders of this Honourable Court in that behalf, and I at the time of such service showed to the said defendant C. D. [*or as may be; naming or describing the*

(*d*) Insert here the date mentioned in the Registrar's *subpœna* note.

(*e*) The title to be here set forth should follow that in the certificate to set down the cause. If the *subpœna* is issued at the instance of the defendant, the following words should be added after the title: "at the request of the defendant C. D."; Dan. Pr. 832.

(*f*) See Cons. Ord. III. 2, 5.

(*g*) As to the time for, and mode and proof of, service of the *subpœna*, see Dan. Pr. 831—834; Cons. Ord. XXI. 5; *Ibid.* XXVIII. 6, 7, 9; and see *Cockshott* v. *London General Cab Co.*, 26 W. R. 31. The affidavit must state when, where, how, and by whom the service was effected; Cons. Ord. XXVIII. 8; Dan. Pr. 834. Where the same solicitor is concerned for more than one defendant, a copy for each defendant should be served on him; Dan. Pr. 832, note (*t*).

(*h*) As to service on the solicitor, see Dan. Pr. 832—834; Cons. Ord. XXVIII. 7; and note (*g*) *supra*.

person served, as above] the said original *subpœna* so under seal as aforesaid.

2. By the said *subpœna*, the said defendant C. D. was commanded to appear before [*Recite the subpœna from these words to* "thereafter," *and continue thus:*] this cause should come on for hearing [*Continue the recital of the subpœna from these words to the end*].

1561. Affidavit of having been served with the *subpœna* (*j*).

Formal parts: see ante No. 693.

1. I, C. D., the above named defendant

Or, I, E. F., of [*place of business*] the solicitor in this cause for the defendant C. D.; *Or*,

I, J. K., of [*residence*], clerk to Mr. E. F., of [*place of business*], the solicitor in this cause for the defendant C. D.; *or as may be*,

make oath and say as follows:

1. On the —— day of ——, 187—, I [*Or*, I, as such solicitor as aforesaid; *Or*, I, as such clerk as aforesaid; *or as may be*] was duly served at my address for service [*Or*, the address for service of the said C. D.; *or as may be*] situate at [*state where*] by [*state whom; as thus:*] a clerk of Mr. L. M., the solicitor for the plaintiff in this cause, with a paper writing purporting to be a copy of a *subpœna*, dated the —— day of ——, 187—, issuing out of and under the seal of this Honourable Court, and of an indorsement thereon, in the form prescribed by the General Orders of this Honourable Court in that behalf, and commanding the said defendant to appear before [*Recite the subpœna as in paragraph 2 of* No. 1560 *ante*].

2. At the time of the service aforesaid, the said original *subpœna* so under seal as aforesaid was produced and shown to me.

1562. Notice that special case has been set down for hearing (*k*).

Formal parts: see ante No. 21.

Take notice that I have this day set down the special case in this cause for hearing.

(*j*) See Dan. Pr. 834; *Cockle* v. *Joyce*, 7 Ch. D. 56; but no affidavit of having been served with the *subpœna* seems to be necessary now; *James* v. *Crow*, 7 Ch. D. 410; in which *Cockle* v. *Joyce* (*supra*) was not followed; and see *Ex parte Lows, re Lows*, 7 Ch. D. 160.

(*k*) See Dan. Pr. 1707, note (*o*). As to the fee payable on setting down the case, see note (*b*) to No. 1557 *ante*.

1563.

Brief for counsel (*l*).

(1) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Full title of the cause, and reference to the record.*]

(1) Contents.

Brief for the plaintiff [*Or*, defendant A. B.].
——, 187—. On this date, the following special case was filed in this cause :
Special case stated [*Set out the special case verbatim : from these words to the end*].

(2) Indorsement.

(2) In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
A. } Brief
v. } Special Case :
B. } stated pursuant to 13 & 14 Vic. c. 35.
For the plaintiff [*Or*, defendant A. B].
Mr. C. [*Continue as in* No. 772 *ante, to the end.*]

(*l*) Counsel's brief will ordinarily consist of a copy of the special case, of the affidavits filed in support (if any), and of any material documents not sufficiently set out in the case : accompanied by such observations as may be deemed necessary ; Dan. Pr. 1707. Printed copies of the special case must be delivered by the plaintiff for the use of the Judge ; R. S. C. Ord. XXXIV. 3 ; R. S. C. (Costs), Ord. IV. As to the hearing, see Dan. Pr. 1708, 1709 ; 13 & 14 Vict. c. 35, ss. 8, 14. For forms of judgment on the hearing, see Seton, ed. 4, 43, 44. On entering the judgment, a fee is payable of 10*s.* on the lower scale, and £1 on the higher scale, by means of a stamp impressed upon or adhesive to the judgment ; Ord. as to Court Fees, Oct. 1875 ; Ord. as to Fees, April, 1876 ; Wilson, 506, 522. As to drawing up, passing and entering the judgment, see *ante* pp. 462—465. As to appealing against the judgment, see *ante*, note (*a*) at p. 780. As to the costs of a proceeding by special case, see 13 & 14 Vict. c. 35, s. 32 ; Dan. Pr. 1710.

CHAPTER XXII.

PETITION OF RIGHT (*a*).

1564. Formal parts of a petition of right (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Set out the title of the intended suit.*]

To the Queen's Most Excellent Majesty:

The humble petition of A. B., of ——, by his solicitor C. D., of —— [*State the christian and surnames, and usual places of abode of the suppliant, and of his solicitor, if any, by whom the petition is presented.*]

Showeth as follows:

1. The, *&c.* } [*Set forth, with convenient certainty, the facts*
2. On, *&c.* } *entitling the suppliant to relief.*]

Your suppliant therefore humbly prays that, *&c.*

Dated the —— day of ——, 187—.

A. B.

[*Or,* C. D., counsel [*Or,* solicitor] for the above-named suppliant A. B.]

1565. Indorsement on copy petition for service on the Solicitor to the Treasury (*c*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]
Petition of Right
of A. B.

The suppliant prays for a defence on behalf of Her Majesty, within twenty-eight days after the date hereof; or, otherwise,

(*a*) As to petitions of right, see Dan. Pr. 121—123; 23 & 24 Vict. c. 34; Ord. 1 Feb. 1862; Seton, ed. 4, pp. 58, 59; Morgan, 256—258.

(*b*) See Dan. Pr. 122; 23 & 24 Vict. c. 34, s. 1, and Sched. No. 1. As to suing and defending a petition of right *in formâ pauperis*, see Ord. 1 Feb. 1862, rules 5, 6; and see *ante* pp. 89—91; and as to security for costs, see 23 & 24 Vict. c. 34, s. 7; and *post* Chap. XXIX. p. 966. On filing a petition of right, a fee is payable of 10*s.*, on the lower scale, and £1, on the higher scale, by means of a stamp impressed upon the petition or upon a *præcipe* to be filed; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*c*) See Dan. Pr. 122; 23 & 24 Vict. c. 34, ss. 3—5, 8, and Sched. No. 2; Ord. 1 Feb. 1862, rule 3.

that the petition may be taken as confessed. Dated the —— day of ——, 187—.

C. D., of [*address*],
[Agent for E. F., of [*address*],]
the suppliant's solicitor.

1566.
Indorsement for service on other parties (*d*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]
Petition of Right
of A. B.

To E. F.

You are hereby required to appear to the within petition, in the Chancery Division of Her Majesty's High Court of Justice, within eight days, and to put in a defence thereto within fourteen days, after the date hereof.

Take notice that if you fail to appear or put in a defence in due time, the said petition may, as against you, be ordered to be taken as confessed.

Dated [*&c., conclude as in* No. 1565 *ante*].

1567.
Præcipe for appearance (*f*).

In the High Court of Justice,
Chancery Division.

A. B. suppliant,
v.
The Queen. } Petition of Right.

E. F., of [*address*], appears in person [*Or*, G. H., of [*address*], solicitor for E. F., appears for him].

Entered the —— day of ——, 187—.

1568.
Notice of motion that petition may be taken as confessed (*g*).

Formal parts, see post No. 1571.

on the part of the petitioner, that the petition of right of the above named A. B. may be taken as confessed as against Her Majesty [*or as may be*].

(*d*) See *ante* No. 1565 note (*c*).
(*f*) See Dan. Pr. 123; 23 & 24 Vict. c. 34, s. 5, and Sched. No. 4.
(*g*) See 23 & 24 Vict. c. 34, s. 8.

1569. Certificate of tenor and purport of judgment (*h*).

To the Lords Commissioners of Her Majesty's Treasury [*Or*, To the Treasurer of Her Majesty's Household].

Petition of Right of A. B., in Her Majesty's High Court of Justice.

I humbly certify that on the —— day of ——, A.D. 187—, It was, by the said High Court of Justice, adjudged [*Or*, ordered] that the above named suppliant was entitled to, *&c.*

[*Judge's signature.*]

(*h*) See Dan. Pr. 123; 23 & 24 Vict. c. 34, ss. 8, 9, 13, 14, and Sched. No. 5. For form of judgment on the hearing of a petition of right, see Seton, ed. 4, p. 58.

CHAPTER XXIII.

INTERLOCUTORY APPLICATIONS.

SECTION I. BY MOTION (*a*).

1570.

Formal parts of indorsement of a motion paper (*b*).

In the High Court of Justice,
Chancery Division (*c*).
[*Name of Judge* (*d*)].
[*Or*, In the Court of Appeal.]
[*State short title of action or matter, and reference to the record* (*f*) *; as thus :*]

In Re Jones' Estate
Styles
v.
Brown.
[187—. J. — (*f*)]
} Brief.

[*State name of Counsel to move, his fee, on whose behalf the motion is to be made, and its object ; as thus :*]

Mr. A.
— Guā. (*g*).

To move on behalf of the plaintiff [*Or*, defendant, A. B. ; *Or*, of C. D., *&c.*] as within.

Or, that [*State shortly the object of the motion ; and if any*

(*a*) As to applications by motion and the practice thereon, see Dan. Pr. 1437—1451 ; R. S. C. Ord. LIII.

(*b*) As to motions of course, see Dan. Pr. 1438 ; as to special *ex parte* motions, see Dan. Pr. 1438, 1439. For a list of applications which may be made by motion of course, or *ex parte* special motion, see Dan. Pr. App. I., pp. 1993—2001. A motion paper should ordinarily be prepared on half a sheet of foolscap and be folded lengthways.

(*c*) See Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11 ; R. S. C. Ord. V. 4.

(*d*) See Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 33, 42 ; R. S. C. Ord. V. 4, 4*a* (R. S. C. June, 1877) ; Cons. Ord. VI. 6. By order of the L. C., of June, 1877, no cause or matter may, until further order, be assigned to Mr. J. Fry. As to the Judge to whom the application should be made in a proceeding already pending, see Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11, subs. 1 ; R. S. C. Ord. LXI. 6, 7.

(*f*) As to the reference to the record, see *ante*, notes (*c*), (*f*), to No. 210.

(*g*) Counsel's fee, on a motion purely of course, is half a guinea ; and on an *ex parte* motion one guinea, or more, according to circumstances.

instructions are written in the fold, or inside the brief, add: See within (*i*)].

An affidavit in support accompanies (*k*).

[*Add name &c. of solicitor or party instructing: see ante* No. 92.]

1571. Formal parts of a notice of motion (*l*).

In the High Court of Justice,
Chancery Division (*ll.*)
[*Name of Judge* (*m*)].
[*Or,* In the Court of Appeal.]
[*Title of action or matter and reference to the record* (*mm*).]
Take notice that this Honourable Court will be moved

(*i*) For convenience of statement, the forms of motion paper given in this work usually assume that the entire instructions to counsel will be set forth in the indorsement; but such instructions, or part of them, may be written in the fold or inside of the brief, or on a separate paper, instead of being indorsed.

(*k*) If an affidavit, or other document, is sent, it should be referred to here.

(*l*) As to motions upon notice, see Dan. Pr. 1438—1451; R. S. C. Ord. LIII. As to the form of the notice, see Dan. Pr. 1440, 1441. As to service of the notice, see Dan. Pr. 1442, 1443; Cons. Ord. III. 2, 5; R. S. C. Ord. XIX. 6, 29; *Dymond* v. *Croft*, 3 Ch. D. 512; *Morton* v. *Müller*, 3 Ch. D. 516; *ante*, note (*e*) to No. 740; for form of affidavit of service, see *post* No. 1573. As to the evidence on a motion, see *post*, pp. 858—860. As to the hearing of the motion, see Dan. Pr. 1444, 1446. The hearing of the motion may, from time to time, be adjourned, on such terms, if any, as the Court or Judge shall think fit; R. S. C. Ord. LIII. 6; and if, on the hearing of the motion, the Court or Judge shall be of opinion that any person to whom notice has not been given, ought to have had such notice, the Court or Judge may either dismiss the motion, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose; R. S. C. Ord. LIII. 6. Where a party gives notice of motion and does not appear, he will be ordered to pay the costs of the motion; *Berry* v. *Exchange Trading Co.*, 1 Q. B. D. 77; *Aitken* v. *Dunbar*, 25 W. R. 366; *Yetts* v. *Biles*, 25 W. R. 452; but where the notice is bad on the face of it, the party served should not appear, and will not get his costs of so doing; *Daubney* v. *Shuttleworth*, 1 Exch. D. 53. The V. C. Malins requires that counsel who intends to ask for the costs of an abandoned motion, should before doing so communicate his intention to the counsel who is instructed to move; *Aitkin* v. *Dunbar*, 25 W. R. 366; the V. C. Hall does not seem to require this; *Yetts* v. *Biles*, 25 W. R. 452. Where a party appears on a motion and consents to its standing over, and does not appear on the adjournment, an order may be made without any affidavit of service; *Ex parte Alcock*, 1 C. P. D. 68. As to orders made on motion, see Dan. Pr. 1450, and *post* p. 861.

(*ll*) See note (*c*) to No. 1570 *ante*.

(*m*) See note (*d*) to No. 1570 *ante*.

(*mm*) As to the reference to the record, see *ante*, notes (*e*), (*f*), to No. 210.

[*If the motion is to be made to the High Court of Justice* (*n*), *state before what Judge* (*o*) *; as thus :*]
before the Lord High Chancellor ; *Or*,
before his lordship the Master of the Rolls ; *Or*,
before his lordship the Vice-Chancellor —— ; *Or*,
before his lordship Mr. Justice ——

[*If the motion is to be made elsewhere than in the Judge's usual Court at Westminster, or Lincoln's Inn, state where ; as thus :*]
at the residence of the said Lord Chancellor [*or as may be*]
situate at [*state where*]
[*State on what day the motion is proposed to be made, as thus :*] on Thursday, the —— day of ——, 187— (*p*)

[*If the motion is to be heard at a specially appointed hour, state so ; as :*] at eleven of the clock in the forenoon of that day, or so soon thereafter as counsel can be heard
[*State by whom, or on whose behalf, the motion is to be made ; as thus :*] by Mr. A. as counsel on the part of the above named defendant C. D. (*q*)

Or, by the above named defendant C. D. in person (*q*)
that [*Here state the precise object of the motion ; as thus :*] this action may stand dismissed with costs for want of prosecution.

[*If special leave has been obtained to serve the notice* (*e. g. where the defendant has not appeared* (*s*)) *: or to give the notice for a non-motion day : or for a motion day short of the ordinary two clear days after service* (*t*) *: or for a special hour or place : state so ; as :*]

And take also notice, that special leave to serve you with this notice

[*If so, add :*] and to give this notice for the day (and hour and place) aforesaid,

has been obtained from the said Lord Chancellor [*or as may be*].

Or,

And take also notice, that special leave to give this notice

(*n*) Where the motion is to be made before the Court of Appeal, the statement will be unnecessary.

(*o*) See Cons. Ord. XXXIII. 1. As to the Judge to whom the application should be made, see Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11, subs. 1 ; R. S. C. Ord. LXI. 6, 7.

(*p*) The day named must be a day on which the Court can sit, otherwise the notice will be bad ; *Daubney* v. *Shuttleworth*, 1 Exch. D. 53 ; *Deykin* v. *Coleman*, 25 W. R. 294. Unless the Court or Judge give special leave to the contrary, there must be at least two clear days between the service of a notice of motion, and the day named in the notice for hearing the motion ; R. S. C. Ord. LIII. 4 ; *Daubney* v. *Shuttleworth*, 1 Exch. D. 53 ; and see *Forrest* v. *Davis*, 26 W. R. 534.

(*q*) As to the description of the applicant, see note (*t*) to No. 881 *ante*.

(*s*) See R. S. C. Ord. LIII. 7, 8.

(*t*) See R. S. C. Ord. LIII. 4 ; note (*p*), *supra*.

for the day (and hour and place) aforesaid has been obtained from the said Lord Chancellor [*or as may be*].

Dated this —— day of ——, 187—.

[*Add name, &c., of solicitor* (*u*) *or party giving the notice: see ante* No. 92.]

To [*Insert names of the solicitors or parties to whom the notice is given; as thus:*]

Mr. L. M., solicitor [*Or*, agent] for the plaintiff [*Or*, for the defendant; *Or*, for the petitioner; *Or*, for the respondent N. O.; *Or*, for P. R., attending under an order dated the —— of ——, 187—].

Or, To

the plaintiff [*Or*, the defendant; *Or*, the petitioner; *Or*, the respondent N. O.; *Or*, P. R. attending, *&c.*]

1572. Motion paper for leave to serve notice of motion (*uu*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff, that he may be at liberty to serve notice of motion for the —— day of ——, 187—, for an injunction in accordance with the indorsement of claim on the writ of summons [*or as may be*], on the defendant C. D., along with the writ of summons in this action [*Or*, notwithstanding that the said defendant has not appeared in this action, and that the time limited for entering an appearance has not expired].

[*If so, add:*] And that service of such notice upon [*State whom, as in* No. 1264 *ante*] may be deemed good service thereof upon the said defendant C. D.

1573. Affidavit of service of a notice of motion (*v*).

Formal parts: see ante No. 693.

1. On ——, the —— day of ——, 187—, before seven o'clock in the evening [*Or*, two o'clock in the afternoon; *or as may be*]

(*u*) See Dan. Pr. 1440.

(*uu*) The plaintiff may, without leave, serve any notice of motion, petition, or summons, upon any defendant, who having been served with the writ of summons, has not appeared thereto within the time limited; R. S. C. Ord. LIII. 7; and he may, by leave of the Court or a Judge, to be obtained *ex parte*, serve any notice of motion upon a defendant along with the writ, or at any time after service of the writ, and before the expiration of the time limited for appearance; *Ibid.*, 8. As to the form of the notice of motion where such leave is obtained, see *ante* No. 1571, and note (*s*).

(*v*) As to the time for service, see R. S. C. Ord. LIII. 4; note (*p*) to No. 1571 *ante*. As to the mode of service, see Dan. Pr. 1442, 1443; Cons. Ord. III. 2, 5; R. S. C. Ord. XIX. 6, 29; *Dymond* v. *Croft*, 3 Ch. D. 512; *Morton* v. *Miller*, 3 Ch. D. 516; and *ante*, note (*e*) to No. 740. As to the affidavit of service, see Dan. Pr. 1443. As to the necessity for an affidavit of service where the party served appears and consents to the motion standing over, and does not appear on the adjournment, see *Ex parte Alcock*, 1 C. P. D. 68; note (*l*) to No. 1571 *ante*.

of that day (*w*), I served [*Describe the person or persons required to be served; as thus:*]

A. B., the defendant [*Or*, A. B., one of the defendants] in this action,

Or,

A. B., who, by an order dated the —— day of ——, 187—, had liberty to attend the proceedings in this action [*Or*, matter],

Or,

A. B., in the order made in this action [*Or*, matter] dated the —— day of ——, 187—, named,

Or,

A. B., of [*residence and addition*],

Or,

Mr. C. D., who acts as solicitor [*Or*, agent] in this action [*Or*, matter] for the plaintiff, *&c.*,

Or,

each of the following persons, that is to say: (1) A. B., one of the defendants in this action; (2) Mr. C. D., who acts as solicitor in this action for the plaintiff; and (3) Mr. G. H., who acts as agent in this action for L. M., who, by an order dated the —— day of ——, 187—, had liberty to attend the proceedings therein,

[*or as may be*],

with a notice in writing intituled in this action [*Or*, matter], addressed to the said [*State whom*], and purporting that [*Recite the body of the notice:*] by delivering a true copy of the said notice to, and leaving the same with [*Describe the person or persons on whom, and where, service was effected; as thus:*]

the said A. B., personally, at [*State where*], in the (county) of ——.

Or,

the said A. B., personally, at [*State where*], in the (county) of ——, and the said C. D., personally, at, *&c.*

Or,

each of the following persons, that is to say: (1) the wife of the said A. B., at his dwelling-house, situate at [*State where*], in the (county) of ——; (2) the clerk of the said C. D., at the address for service of the said C. D., situate at, *&c.*; and (3) the servant of the said G. H., at the address for service of the said G. H., situate at, *&c.*

(*w*) As to the hours for service, where personal service is not required, see Dan. Pr. 380; Cons. Ord. XXXVII. 2. The statement as to the hour is material only where the service is not made until the last day allowed to effect it.

[*Same as* No. 742 *ante, describing the document served, thus:* "a notice on behalf of the said plaintiff" [*or as may be*], "addressed to" [*State whom*].]

1574. Affidavit of having been served with a notice of motion (*x*).

1575. Indorsement on brief on a special motion (*y*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Or*, In the Court of Appeal.]
—— day of —— 187— [*day named in the notice for making motion*].

Brown
v.
Dobinson.
187—. B. No.

Brief on Motion.

For the plaintiff [*Continue as in* No. 772 *ante*].

(*x*) *Quære*, whether this affidavit be now necessary; see *Ex parte Lows, Re Lows*, 7 Ch. D. 160; *James* v. *Crow*, 7 Ch. D. 410; overruling *Cockle* v. *Joyce*, 7 Ch. D. 56.

(*y*) See Dan. Pr. 1444, note (*s*). Counsel's brief will consist of the evidence in support of, and in opposition to, the motion, and such observations as may be necessary and proper; a copy of the notice of motion should be annexed, and generally a copy of the pleadings should accompany; *Ibid.* As to the evidence on motions, see *post*, pp. 858—860. As to the manner of making a motion, and the course on the hearing of a motion, see Dan. Pr. 1444, 1446; note (*l*) to No. 1571 *ante*. As to orders on motions, see *post*, p. 861.

Section II.—By Petition (*a*).

1576.

Formal parts of a petition of course (*b*).

187—. B. No. —— (*d*).

In the High Court of Justice,
Chancery Division (*bb*).
[*Name of Judge* (*c*)].
[*Set out the title* (*e*) *of the action or matter; as thus:*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.
[*Or thus:*] In the Matter of A. B., an Infant.
To Her Majesty's High Court of Justice.
The humble petition of the plaintiff [*or as may be*] (*f*).
Showeth as follows:

1. By, &c. } [*State the material facts on which the application is*
2. On, &c. } *founded, and divide the statements into paragraphs numbered consecutively* (*g*).]

[*Conclude thus:*]
Your petitioner therefore humbly prays, that [*State the precise object of the petition*].
And your petitioner will ever pray, &c.

(*a*) As to applications by petition, and the practice thereon, see Dan. Pr. 1451—1461.

(*b*) As to petitions of course, see Dan. Pr. 1451, 1453, 1454. For a list of the applications which may be made by petition of course, see Dan. Pr. App. II., pp. 2002—2012.

(*bb*) See Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11; R. S. C. Ord. V. 4.

(*c*) See Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 33, 42; R. S. C. Ord. V. 4, 4*a* (R. S. C. June, 1877); Cons. Ord. VI. 6. No matter may until further order be assigned to Mr. J. Fry; Ord. of L. C. of June, 1877; note (*d*) to No. 1570 *ante*. As to the Judge by whom a petition presented in a proceeding already pending, will be heard, see Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11, subs. 1; R. S. C. Ord. LXI. 6, 7.

(*d*) As to the reference to the record, see notes (*e*), (*f*), to No. 210 *ante*.

(*e*) For a collection of special titles of petitions, see *post*, pp. 1150, 1151.

(*f*) As to the description of the petitioner, see note (*t*) to No. 881 *ante*; and Dan. Pr. 1452.

(*g*) See Dan. Pr. 1452, 1453.

1577. Consent to a petition not otherwise of course (*h*).

I consent to an order in the terms of the prayer of this petition.
Dated —— day of ——, 187—.
X. Y., solicitor for the plaintiff [*or as may be*].

1578. Formal parts of special petition (*j*).

[*Proceed as in* No. 1576 *ante, to the end of the stating part, and conclude thus:*]

Your petitioner therefore humbly prays, that [*State the precise object of the petition*].

Or that such other order may be made in the premises as to this Honourable Court shall seem meet.

And your petitioner will ever pray, &c. (*k*).

1579. Foot note to a special petition (*l*).

[*If any person is intended to be served with the petition, add:*]

It is intended to serve this petition on [*Name the persons intended to be served, as thus:*] the defendant C. D. (*m*).

[*If no person is intended to be served with the petition, add:*]

It is not intended to serve this petition on any person.

(*h*) For cases in which orders on petition at the Rolls will be drawn up on production of the written consent of the opposite party, without the attendance of counsel, see Dan. Pr. App. II., pp. 2002—2012. The consent is usually written at the foot of the petition.

(*j*) As to special petitions and the practice thereon, see Dan. Pr. 1451—1461. As to petitions on behalf of persons under disability, see Dan. Pr. 1452. As to the stating part of the petition, see *Ibid.*, 1452, 1453. As to the presentation of the petition, see *Ibid.*, 1453, 1454. As to the persons on whom the petition should be served, and the time for and mode of service, see *Ibid.*, 1454—1456; R. S. C. Ord. XIX. 6, 29. As to the appointment of a guardian *ad litem* to a respondent who is under disability, see Dan. Pr. 1456; and *ante* Nos. 75 to 77, and 142 to 144. As to obtaining security for costs, see *Ibid.*, 1452, and *post* Chap. XXIX., p. 966. As to amending the petition, see Dan. Pr. 1459, and *post* No. 1587. As to evidence on the hearing of the petition, see *post*, pp. 858—860. As to setting down the petition, see Dan. Pr. 1456. As to hearing the petition, see *Ibid.*, 1457, 1458. As to orders on petitions, see *Ibid.*, 1458; and *post*, p. 861. As to costs, see Dan. Pr. 1459—1461. As to obtaining an order to carry on the proceedings in the case of a change or transmission of the interest or liability of a party, petitioner or respondent, see R. S. C. Ord. L.; *Re Atkins*, 1 Ch. D. 82; *ante*, pp. 7 to 16.

(*k*) No signature of counsel to a petition seems to be now necessary; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 100; R. S. C. Ord. XIX, 4; R. S. C. Ord. LXIII. A petition presented on behalf of a pauper must be signed by his solicitor; Cons. Ord. VII. 11.

(*l*) Dan. Pr. 1453; Cons. Ord. XXXIV. 1.

(*m*) The respondents must be mentioned by name, and not simply as plaintiffs and defendants, which is not a sufficient description; *Newark* v. *Laws*, W. N. (1877), 223.

1580.
Motion paper for substituted service of a petition (*n*).

Formal parts: see ante No. 1570.

To move on behalf of the petitioner, that service of his petition presented on the —— day of ——, 187—, upon [*Describe the proposed substitute as in* No. 1264 *ante*] may be deemed good service of the said petition on the respondent C. D.

1581.
Affidavit in support.

[*Same as* No. 1265 *ante.*]

1582.
Motion paper for leave to serve a petition abroad (*o*).

Formal parts: see ante No. 1570.

To move on behalf of the petitioner, for leave to serve a copy of his petition presented on the —— day of ——, 187—, upon C. D., at [*State where, as thus:*] Dublin, or elsewhere, in Ireland.

1583.
Affidavit in support.

[*Same as* No. 873 *ante.*]

1584.
Affidavit of service of a petition (*p*).

Formal parts: see ante No. 693.

1. On ——, the —— day of ——, 187—, before seven o'clock in the evening [*Or,* two o'clock in the afternoon; *or as may be*] of that day (*q*), I served [*Describe the person or persons required to be served; as thus:*]

A. B., the defendant [*Or,* A. B., one of the defendants] in this action,

Or,

A. B., who, by an order dated the —— day of ——, 187—, had liberty to attend the proceedings in this action [*Or,* matter],

Or,

A. B., in the order made in this action [*Or,* matter] dated the —— day of ——, 187—, named,

(*n*) See Dan. Pr. 1455. For order in like case, see *Bellis* v. *Jones,* V.-C. S., 21 Dec. 1866, Reg. Lib. A. 2680.

(*o*) See Dan. Pr. 1456. For order in like case, see *Re Wright,* V.-C. M., 23 Mar. 1870, Reg. Lib. B. 724.

(*p*) As to the persons on whom the petition should be served and the time and mode of service, see Dan. Pr. 1454—1456; R. S. C. Ord. XIX. 6, 29. As to the affidavit of service, see Dan. Pr. 1458.

(*q*) See note (*w*) to No. 1573 *ante.*

Or,

A. B., who is named in the note at the foot of the petition hereinafter mentioned,

Or,

Mr. C. D., who acts as solicitor [*Or*, agent] in this action [*Or*, matter] for the plaintiff, *&c.*,

Or,

each of the following persons, that is to say: (1) A. B., one of the defendants in this action; (2) Mr. C. D., who acts as solicitor in this action for the plaintiff; and (3) Mr. G. H., who acts as agent in this action for L. M., who, by an order, dated the —— day of ——, 187—, had liberty to attend the proceedings therein,

[*or as may be*],

with a petition preferred in this action [*Or*, matter] by [*State whom; as thus:*] the above-named plaintiffs to this Honourable Court with the fiat or order (*r*) of the Lord High Chancellor [*Or*, of his lordship the Master of the Rolls] thereon, dated the —— day of ——, 187—, whereby all parties concerned were required to attend his lordship thereon on the then next day of petitions, and notice thereof was to be given forthwith [*or as may be*], and with the note at the foot of the said petition, and of which note a true copy is set forth in the schedule hereto: by delivering a true copy of the said petition, fiat or order, and foot note to, and leaving the same with [*Describe the person or persons on whom, and where, service was effected; as thus:*]

the said A. B., personally, at [*State where*], in the (county) of ——,

Or,

the said A. B., personally, at [*State where*], in the (county) of ——, and the said C. D., personally at, *&c.*,

Or,

each of the following persons, that is to say: (1) the wife of the said A. B., at his dwelling-house, situate at [*State where*], in the (county) of ——; (2) the clerk of the said C. D., at the address for service of the said C. D., situate at, *&c.*; and (3) the servant of the said G. H., at the address for service of the said G. H., situate at, *&c.*

2. At the time of the aforesaid service thereof, I showed the said original petition, with the said fiat or order thereon, and foot note thereto, to the person [*Or*, to each of the persons] to whom such true copy thereof was delivered by me as aforesaid.

The schedule above referred to.

[*Set out a copy of the foot note.*]

(*r*) As to answering the petition, see Dan. Pr. 1453, 1454.

1585.
Affidavit of service of petition on a substitute (*s*).

Formal parts: see ante No. 693.

1. On ——day, the —— day of ——, 187— [*Continue as in paragraph* 1 *of* No. 1584 *ante, to* leaving the same with; *and continue thus:*] X. Y. [*Name of substitute*] personally at [*State where*].

2. [*Same as paragraph* 2 *of* No. 1584 *ante.*]

3. The said X. Y. is the person of that name [*Continue as in paragraph* 4 *of* No. 875 *ante, to end*].

The schedule above referred to.

[*Set out a copy of the foot note.*]

1586.
Affidavit of having been served with a petition (*t*).

[*Same as* No. 742 *ante, describing the document served thus:* "a copy of a petition presented by the said plaintiff [*or as may be*], and of the fiat or order thereon and foot note thereto: in which foot note the name of the said [*State whom*] is included."]

1587.
Motion paper for liberty to amend petition (*u*).

Formal parts: see ante No. 1570.

To move on behalf of the petitioner for liberty to amend his petition presented on the —— day of ——, 187—, as he may be advised [*Or,* by [*Here state the nature of the amendments desired*]].

1588.
Indorsement on brief on hearing of petition (*v*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Brown
v.
Dobinson.
187—. B. No. .

} Brief on Petition.

For the petitioner [*Or,* respondent A. B.]
Mr. Y., Q. C. [*Continue as in* No. 772 *ante, to end*].

(*s*) As to substituted service, see Dan. Pr. 1455. As to the affidavit of service, see Dan. Pr. 1458.

(*t*) See Dan. Pr. 1458. *Quære*, whether this affidavit be now necessary; see *Ex parte Lows, Re Lows*, 7 Ch. D. 160; *James* v. *Crow*, 7 Ch. D. 410; overruling *Cockle* v. *Joyce*, 7 Ch. D. 56.

(*u*) As to the amendment of a petition, see Dan. Pr. 1459.

(*v*) Counsel's brief will consist of a brief copy of the petition, and of the evidence on each side, together with such observations as may be necessary and proper; Dan. Pr. 1456, note (*k*). As to setting down a petition, see Dan. Pr. 1456. As to the course on the hearing of a petition, see *Ibid.*, 1457, 1458.

1589. Request that a petition, adjourned without day, may be restored to the paper (*w*).

In the High Court of Justice,
Chancery Division.

[*Short title.*]

I request that the petition of A. B., presented on the ——, 187—, and directed on the ——, 187—, to stand over, may be restored to the paper of petitions of the Master of the Rolls [*Or*, Vice-Chancellor ——], for the next petition day. Dated this —— day of ——, 187—.

C. D., solicitor for the petitioner.

1590. Request that a petition directed to stand over, or adjourned for further consideration, may be restored to the paper (*x*).

Formal parts: see ante No. 1589.

I request that the petition of A. B., presented on the ——, 187—, and directed on the ——, 187—, to stand over [*Or*, the further consideration whereof was adjourned by the order dated the ——, 187—], may be placed in the paper of petitions of the Master of the Rolls [*Or*, Vice-Chancellor ——], for the next petition day.

1591. Notice of restoration of petition (*y*).

Formal parts: see ante No. 21.

Take notice that the petition of A. B., presented (*&c.: as in* No. 1590], has this day been placed by the Registrar in the paper of petitions of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], for the next petition day.

Section III.—By Summons (*a*).

[*Same as* Nos. 881 *to* 888 *ante.*]

(*w*) See Dan. Pr. 1457; Reg. Regul. 15 Mar. 1860, rule 14. As to the adjournment of petitions, see Dan. Pr. 1188, 1189, 1457. For summons to proceed on a petition adjourned to Chambers, see *ante* No. 1191; and see notes (*q*), (*r*), thereto.

(*x*) See Dan. Pr. 1457.

(*y*) *Ibid.*, 1458.

(*a*) See notes to Nos. 881 to 888 *ante*. Every application which by the Rules of Court is authorised to be made at Chambers, is to be made in a summary way by summons; R. S. C. Ord. LIV. 1.

Section IV.—Evidence on Interlocutory Applications.

(1.) *Documentary evidence* (*b*).

1592. Notice to admit documents (*c*).

[*Same as* Nos. 561 *to* 565 *ante.*]

1593. Compelling production of documents by *subpœna duces tecum* (*d*).

[*Same as* Nos. 566 *to* 579 *ante.*]

1594. Notice to produce documents in possession of opposite party.

[*Same as* Nos. 580 *and* 581 *ante.*]

(2.) *Oral evidence* (*e*).

1595. Application for appointment of special examiner (*f*.)

[*Same as* Nos. 600 *and* 601 *ante.*]

(*b*) As to documentary evidence in general, see *ante* Nos. 561 to 592, and notes thereto.

(*c*) See notes to Nos. 561 to 565 *ante.*

(*d*) See notes to Nos. 566 to 579 *ante.*

(*e*) In any cause or matter, a witness may be examined orally for the purpose of using his evidence on any motion, petition, or other proceeding before the Court; such oral examination generally takes place before the examiner of the Court, or a special examiner; 15 & 16 Vict. c. 86, s. 40; but it may take place before the Court itself on the hearing of the application; see *Re Coal Economising Gas Co., Gover's Case*, 24 W. R. 36; or for the purpose of proceedings in Chambers it may be taken before the Judges' Chief Clerk; see note (*p*) at p. 484 *ante.* Any person who has made an affidavit to be used on any motion, petition, or summons, may be ordered to attend for cross-examination thereon; R. S. C. Ord. XXXVII. 2; such cross-examination will generally take place before an examiner of the Court or a special examiner; 15 & 16 Vict. c. 86, s. 40.

(*f*) See note (*e*) to No. 600 *ante.*

[*Same as* Nos. 626 *to* 645 *ante* [*before the Court or an examiner*], *and* Nos. 911 *to* 918 *ante* [*before a Judge's chief clerk*]].

1596. Compelling attendance of witness for examination or cross-examination (*g*).

[*Same as* Nos. 646 *to* 660 *ante.*]

1597. Oaths, affirmations, and declarations of witnesses examined orally (*h*).

[*Same as* Nos. 661 *to* 663 *ante* [*before an examiner*], *and* Nos. 920, 921 *ante* [*before a Judge's chief clerk*]].

1598. Formal parts of deposition of witness examined or cross-examined orally (*j*).

[*Same as* Nos. 667 *to* 669 *ante.*]

1599. Translating depositions (*k*).

(3.) *Evidence by affidavit* (*l*).

1600. Formal parts of affidavits, affirmations, and declarations (*m*).

[*Same as* Nos. 693 *to* 722 *ante.*]

[*Same as* No. 723 *ante.*]

1601. Memorandum of exhibit (*n*).

(*g*) See notes to Nos. 626 to 645, and Nos. 911 to 918 *ante.*

(*h*) See notes to Nos. 646 to 660 *ante.*

(*j*) See notes to Nos. 661 to 663, and Nos. 920 and 921 *ante.*

(*k*) See notes to Nos. 667 to 669 *ante.*

(*l*) Upon any motion, petition, or summons, evidence may be given by affidavit; R. S. C. Ord. XXXVII. 2; the Court or Judge may on the application of either party, order the attendance for cross-examination of the person making such affidavit; *Ibid.* As to evidence by affidavit on motions, see Dan. Pr. 1444—1446; on petitions, see *Ibid.*, 1456, 1457; and on summonses, see *Ibid.*, 1053, 1059; and *ante* Nos. 923—931.

(*m*) See notes to Nos. 693 to 722 *ante.*

(*n*) See note (*q*) to No. 723 *ante.*

1602
Notice of filing an affidavit, &c. (*o*).

[*Same as* No. 724 *ante.*]

1603.
Notice of intention to read affidavit, &c., already filed (*p*).

[*Same as* No. 725 *ante.*]

1604.
Summons for attendance for cross-examination of a person who has made an affidavit, &c. (*q*).

[*Same as* No. 927 *ante.*]

1605.
Notice of intention to cross-examine witnesses, and for their production accordingly (*r*).

[*Same as* No. 928 *ante.*]

1606.
Summons for time to serve notice (*s*).

[*Same as* Nos. 929 *and* 930 *ante.*]

1606a.
Application to take affidavit off the file for scandal, or to expunge scandalous matter (*t*).

[*Same as* Nos. 726 *to* 729 *ante.*]

(*o*) See Dan. Pr. 1058, 1444 ; note (*s*) to No. 724 *ante.*
(*p*) See Dan. Pr. 794, 795, 1058, 1444 ; note (*t*) to No. 725 *ante.*
(*q*) See R. S. C. Ord. XXXVII. 2 ; note (*l*) to No. 927 *ante.*
(*r*) See note (*o*) to No. 928 *ante.*
(*s*) See notes to No. 929 *ante.*
(*t*) See notes to Nos. 726 to 729 *ante.*

SECTION V.—ORDERS MADE ON INTERLOCUTORY APPLICATIONS (*a*).

1607. Notice of motion to discharge an order (*b*).

Formal parts: see ante No. 1571.

on the part of the defendant A. B. [*or as may be*], that the order made in this action [*Or*, matter] dated the —— day of ——, 187—, on the application of the plaintiff [*or as may be*], whereby it was ordered that, &c., may be discharged with costs to be paid by the said plaintiff [*or as may be*] to the said A. B.

1608. Motion paper to make absolute an order *nisi* (*c*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff [*or as may be*], that the annexed order *nisi* dated ——, 187—, may be made absolute.

An affidavit of service, and the Registrar's certificate of no cause shown accompany.

(*a*) As to drawing up orders made on motion, see Dan. Pr. 1450; on petition, see *Ibid.*, 1458; on summons, see *Ibid.*, 1066, 1067; as to drawing up, passing, and entering orders in general, see *ante*, pp. 462—465. On drawing up and entering the order, a fee is payable of 5*s.* on the higher scale, and 3*s.* on the lower scale, by means of a stamp impressed upon or adhesive to the order; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522. For forms of order on motion, see Seton, ed. 4, pp. 54, 55; on petition, see *Ibid.*, p. 49; on summons, see *Ibid.*, pp. 60, 61. As to appealing from an interlocutory order, see *ante*, note (*a*) at p. 780. As to the time for appealing, see R. S. C. Ord. LVIII. 15; and note (*c*) to No. 1433 *ante*. An order made on motion, petition, or summons, may be enforced in the same manner as a judgment to the same effect; R. S. C. Ord. XLII. 20; as to enforcing the order, see *ante*, note (*a*) at p. 687.

(*b*) See Dan. Pr. 1436, 1450, 1461.

(*c*) See Dan. Pr. 1439.

CHAPTER XXIV.

INJUNCTIONS AND RESTRAINING ORDERS, AND WRITS AND ORDERS IN THE NATURE THEREOF.

Section I.—Injunctions and Restraining Orders (*a*).

1608a. Indorsement on writ of summons of claim of an injunction (*a a*).

The plaintiff's claim is for an injunction restraining the defendant A. B. from [*State what; see post* Nos. 1611 *to* 1623].

1609. Motion paper for interim injunction (*b*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff for an order restraining the defendant A. B. [*or as may be; see post* No. 1610], from [*State what; see post* Nos. 1611 *to* 1623], until after the —— day of ——, 187—. And for leave to serve notice of motion for that day along with the writ of summons [*or as may be*].

(*a*) See C. L. P. Act, 1854 (17 & 18 Vict. c. 125), ss. 79—82; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8; Dan. Pr. 1462—1536; Seton, ed. 4, 171—299; *Beddow* v. *Beddow*, 26 W. R. 570. The Court has unlimited power to grant an injunction in any case when it would be right or just so to do; *Beddow* v. *Beddow*, 26 W. R. 570.

(*a a*) Where the obtaining of an injunction is a substantial object of the action, the writ of summons should be indorsed accordingly; R. S. C. Ord. II. 1; *Ibid.*, Ord. III. 1, 2, 3; *Colebourne* v. *Colebourne*, 1 Ch. D. 690.

(*b*) An injunction may be granted by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally, or upon such terms and conditions as the Court shall think just; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8. An application for an injunction may be made by any party; R. S. C. Ord. LII. 4; *Sargant* v. *Reed*, 1 Ch. D. 600; if made by the plaintiff, it may be made either *ex parte* or with notice; R. S. C. Ord. LII. 4; if made by any other party, it must be made on notice to the plaintiff, and may be made at any time after appearance by the party making the application; *Ibid.* The application should be to the Court, if sitting, and not in Chambers; *English* v. *Vestry of Camberwell*, W. N. (1875) 256. As to the evidence upon an application for an injunction, see Dan. Pr. 1520—1522. In case of an *ex parte* application for an injunction, the party making the application must furnish copies of the affidavits upon which it is granted, upon payment of

1610. General form of notice of motion for an injunction (*b*).

Formal parts : see ante No. 1571.
on the part of the plaintiff, that the defendant A. B., his

Or, defendants A. B., C. D., *&c.*, their, and each of their, officers, contractors, servants, workmen, and agents [*or as may be* (*c*)], may be restrained, by the order and injunction of this Honourable Court, from [*State what : for examples, see post* Nos. 1611 *to* 1623]: until the trial of this action [*or as may be* (*d*)], or until further order (*e*).

1611. Notice of motion to restrain interference with ancient lights (*m*).

[*Proceed as in* No. 1610 *ante to* Court,]
from continuing to erect or raise the walls or building, now in course of erection by the defendants to the north of the plaintiff's premises, situate and being [*Describe the plaintiff's premises*], to a greater height than the same wall or building now is : until, *&c.*

1612. Notice of motion to restrain sale of goods under a bill of sale (*n*).

[*Proceed as in* No. 1610 *ante, to* Court,]
from selling, offering for sale, dealing with, or disposing of any of the goods and chattels mentioned or referred to in the bill of sale, dated the —— day of ——, 187—, and made between [*State the parties*]: until, *&c.*

1613. Notice of motion to restrain infringement of copyright (*o*).

[*Proceed as in* No. 1610 *ante, to* Court,]
from printing, publishing, selling, or otherwise circulating such

the proper charges, immediately upon receipt of an application for such copies, or within such time as may be specified in such application, or may have been directed by the Court ; R. S. C. (Costs), Ord. V. 10. When an interim injunction is made to extend over a certain day or until further order, this does not mean that the injunction is to go on after that day and until further order, but that it is to stop earlier than the day named, if the Court shall so order ; *Bolton* v. *London School Board*, 7 Ch. D. 766.

(*b*) See note (*b*) to No. 1609 *ante*.

(*c*) See Dan. Pr. 1524.

(*d*) See Dan. Pr. 1523.

(*e*) As to the meaning of these words, see *Bolton* v. *London School Board*, 7 Ch. D. 766 ; note (*b*) to No. 1609 *ante*.

(*m*) See *Back* v. *Inns of Court Hotel Company, Limited*, V.-C. W. 24 March, 1865, Reg. Lib. A. 488 ; and see *Waterson* v. *Fowler*, V.-C. S. 21 Dec. 1865, Reg. Lib. B. 2437. As to interference with ancient lights, watercourses, and other easements, see Dan. Pr. 1485—1489 ; Seton, ed. 4, 197—202 ; 210—219.

(*n*) *Woollatt* v. *Sinclair*, M. R. 1 Jan., 1869, Reg. Lib. B. 11 ; and see Dan. Pr. 1501.

(*o*) See *Scott* v. *Stanford*, V.-C. W. 7 Feb. 1867, Reg. Lib. B. 528 (at the hearing): L. R. 3 Eq. 718, V.-C. W. ; Dan. Pr. 1494, 1521. As to injunc-

portion of the defendant's works, intituled "Mineral Statistics of the United Kingdom of Great Britian and Ireland, for the year 1865," as is set forth in the statistics contained in the annual statements or publications published by, or on behalf of, the plaintiff, and entitled [*State what*]; and from doing any other act or thing in invasion or infringement of the plaintiff's copyright in the said annual statements or publications, or any of them, until, *&c.*

1614.
The like (*p.*)

Formal parts: see ante No. 1571.
on the part of the plaintiff, that the defendant, his printers and publishers, and his and their agents, servants and workmen, may be restrained by, *&c.*, from further printing, publishing, selling, delivering, or otherwise disposing of, the book called "London Lyrics, by F. L.," printed and published for the defendant; or any copy or copies thereof; and from printing or publishing the book called "A selection from the works of F. L.," or any colourable imitation thereof: until, *&c.*

1615.
Notice of motion to restrain distress for rent (*q*).

[*Proceed as in* No. 1610 *ante, to* Court,]
from taking any further proceedings by distress, to recover the rents and profits of the hereditaments and premises situate and being [*Describe the premises*]; and from putting into force and execution the distress levied by the defendant upon the goods and chattels of W. P., until, *&c.*

1616.
Notice of motion to restrain a local Board of Health from polluting a river (*r*).

[*Proceed as in* No. 1610 *ante, to* Court,]
from causing or permitting any sewage, or water polluted with sewage, to pass through the drains or channels under their control into the river C., in such manner as to render the water of the

tions in copyright cases, see Dan. Pr. 1491—1497; Kerr on Inj. 439—472. For a list of the statutes relating to copyright, see Dan. Pr. 1491, n. (*t*); Biddle's Table of Statutes, 50, 51, ed. 2. For a collection of cases in equity as to injunctions relating to copyright, with forms of orders, see Seton, ed. 4, 243—252; and see Phillips on Copyright.

(*p*) *Moxon* v. *Locker*, V.-C. J. 16 June, 1870, Reg. Lib. B. 1668.

(*q*) See *Hooper* v. *Campbell*, V.-C. S. 10 July, 1865, Reg. Lib. A. 1308. For injunction to restrain removal of hay from a farm, see *Hunt* v. *Brown*, M. R. 9 Feb. 1864, Reg. Lib. A. 195.

(*r*) For order in like case, see *Spokes* v. *Banbury Board of Health*, V.-C. W. 1 Mar. 1865, Reg. Lib. B. 833; L. R. 1 Eq. 42, 51; 11 Jur. N. S. 1010. As to nuisances, see Dan. Pr. 1482—1485; Seton, ed. 4, 219—234.

said river at or near the plaintiff's mill, situate at [*State where*], unfit for use by the plaintiff, or otherwise injurious to the health of the persons resident at the said mill: until, *&c.*

1617.
Notice of motion to restrain the getting in of partnership assets, or intermeddling with the business (*s*).

[*Proceed as in* No. 1610 *ante, to* Court,] from possessing himself of, getting in, or receiving, and from disposing of, charging, or incumbering, any part of the moneys, credits, property, assets, estate, or effects of, or belonging to the partnership business in the writ of summons mentioned; and from incurring any debts or debt in respect of the said business, and from carrying on, or in any manner interfering in, or intermeddling with, the said business, or any of the moneys, property, assets, or affairs thereof, without the consent of the plaintiff: until, *&c.*

1618.
Notice of motion to restrain infringement of patent (*t*).

[*Proceed as in* No. 1610 *ante, to* Court,] from making and selling, or making or selling, any blue or purple violet die made according to the process discovered in the specification of the letters patent in the writ of summons mentioned, or according to any process being a colourable imitation thereof; and from in any manner infringing the said letters patent: until, *&c.*

1619.
Notice of motion to restrain the transfer of a ship's register, and sailing of the ship (*x*).

[*Proceed as in* No. 1610 *ante, to* Court,] from transferring on the register the ship marked or called No. 4, in the writ of summons mentioned, to any person or persons; and also to restrain the said defendant, his servants and agents, from removing the said ship out of the jurisdiction of this Court: until, *&c.*

(*s*) See *Sterry* v. *Truss*, V.-C. K. 18 Dec. 1865, Reg. Lib. B. 2401; and *Cowen* v. *Salomons*, M. R. 13 July, 1865, Reg. Lib. A. 1373. As to injunctions in suits between partners, see Dan. Pr. 1513; Seton, ed. 4, 255—259.

(*t*) See *Maule* v. *Eaton*, V.-C. W. 3 May, 1866, Reg. Lib. A. 879; and for further order, making the injunction perpetual, see S. C., V.-C. W. 8 Dec. 1866, Reg. Lib. B. 2671. As to injunctions in patent cases, see Dan. Pr. 1489—1491, 1521, 1531; Seton, ed. 4, 343—357.

(*x*) *Borman* v. *Wilmett*, V.-C. W. 17 Mar. 1865, Reg. Lib. A. 513. As to injunctions to restrain the improper employment of a ship, or indorsement of the register, see Dan. Pr. 1503. For a collection of cases as to injunctions respecting ships, and forms of orders, see Seton, ed. 4, 275—277.

1620.

Notice of motion to restrain transfer of stock, and payment of dividends (*y*).

[*Proceed as in* No. 1610 *ante, to* Court,]
from transferring the £——, consolidated 3*l.* per cent. annuities, standing in their names in the books of the Bank of England, or any part thereof, and from receiving the dividends and interest due or to accrue due thereon; and that the Governor and Company of the Bank of England may be restrained from permitting such transfer, and from paying such dividends and interest: until, *&c.*

1621.

Notice of motion to restrain infringement of trade mark (*z*).

[*Proceed as in* No. 1610 *ante, to* Court,]
from affixing, or causing to be affixed, to any casks of wine shipped to their, or any of their order, or used by them, or any of them, the brand or mark of a crown, and the word Seixo, or any other combination of marks or words so contrived as, by colourable imitation, or otherwise, to represent the marks or brands used by the plaintiff; and from employing, or permitting to be employed, any marks or brands, or words or other designation, in respect of wines offered for sale by the defendants, or any of them, which shall be so contrived as to represent, or to induce a belief, that such wines are Crown Seixo, or the produce of the quinta do Seixo, in the writ of summons mentioned; and also from describing, or offering for sale, the wines simply as Seixo wine; or otherwise using the word Seixo in respect of such wine, without clearly distinguishing the same from wine produced on the plaintiff's said quinta do Seixo: until, *&c.*

1622.

Notice of motion to restrain marrying ward of Court (*a*).

Formal parts: see ante No. 1571.
on the part of the plaintiff [*or as may be*], that A. B., of, *&c.*, may be restrained, until further order, from intermarrying with the plaintiff C. D. [*or as may be*], and from having any intercourse or communication with the said C. D.

(*y*) *Sullivan* v. *Plimpton*, V.-C. M. 11 Jan. 1869, Reg. Lib. B. 6; and see Dan. Pr. 1501.

(*z*) See *Seixo* v. *Provezende*, V.-C. W., 17 Feb. 1865, Reg. Lib. B. 1067 (on motion for decree); Affd. L. C., 17 Jan. 1866, Reg. Lib. B. 199; L. R. 1 Ch. 192; 12 Jur. N. S. 215. As to trade marks, see Merchandize Marks Act, 1862 (25 & 26 Vict. c. 88); Trade Marks Registration Acts, 1875 to 1877 (38 & 39 Vict. c. 91; 39 & 40 Vict. c. 33; 40 & 41 Vict. c. 37); Dan. Pr. 1497—1499, 1531. For a collection of cases as to injunctions respecting trade marks, and forms of orders, see Seton, ed. 4, 234—243.

(*a*) See *Dawson* v. *Thomson*, V.-C. W. 28 Mar. 1865, Reg. Lib. A. 540. For order discharging order for committal of husband for marrying ward, on payment by him of the costs, see *Tredwell* v. *Gray*, V.-C. K. at Chambers, 14 Dec. 1866, Reg. Lib. B. 2698. As to the protection of wards from removal or marriage, see Dan. Pr. 1197, 1207, 1513; and *ante* Nos. 1214—1217.

1623. Notice of motion to restrain the felling of timber (*b*).

[*Proceed as in* No. 1610 *ante, to* Court,]
from felling any timber or other trees standing or growing in the meadow, or in the hedge, situate [*State where*]; and from cutting the said hedge, or the underwood thereof; and from committing any other waste, or otherwise interfering with, the said meadow, or trees, or hedge: until, *&c.*

1624. Notice of injunction having been granted (*i*).

Formal parts: see ante No. 21.
Take notice that this honourable Court has this day granted an injunction [*Or*, made an order that an injunction be awarded] in this action, to [*State terms of injunction or order*].

And take also notice that the said injunction will be issued [*Or*, that the said order will be drawn up], and served upon you, as soon as practicable.

1625. Writ of injunction (*k*).

[*Proceed as in* No. 1278 *ante, to* "Defender of the Faith;" *and continue thus:*]

To [*Insert the names of the person or persons against whom the injunction is awarded; and, if so in the judgment or order, add:* "and his servants, agents, and workmen; *or as may be*].

(*b*) For interim order in like case, see *Ridgway* v. *Ridgway*, V. C. W. 23 May, 1866, Reg. Lib. A. 901. As to waste and trespass, see Dan. Pr. 1476—1482; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8. For a collection of cases and forms of orders for injunctions, see Seton, ed. 4, 185—195.

(*i*) See Dan. Pr. 1525, 1533. As to serving a copy of the Registrar's minutes of the order, see Dan. Pr. 1525.

(*k*) See Dan. Pr. 1525. The writ must be written on parchment, in words at length; on issuing it a fee is payable of £1 on the higher scale, and 10*s.* on the lower scale, by means of a stamp impressed upon a *præcipe;* Order as to Court Fees, Oct. 1875; Order as to Fees, April, 1876; Wilson, 506, 522. The writ must be signed by one of the Clerks of Records and Writs, and sealed with the seal of that office; and, at the time the writ is presented for sealing, a docket thereof (*post* No. 1627) must be left, and the judgment or order awarding the injunction, or an office copy thereof, must be produced; Dan. Pr. 1525. The order, or office copy, is usually returned by the Record and Writ Clerk to the solicitor, on his giving a receipt for it on the back of the docket; *ib.* n. (*z*). Every copy for service of the writ should be a full copy, including the signature of the Record and Writ Clerk; and should be indorsed in like manner as the original: Dan. Pr. 1526. As to the mode of service, see Dan. Pr. 1526. As to substituted service, see Dan. Pr. 905, 1526. The remedy for the breach of an injunction is by committal and not by attachment; Dan. Pr. 1533; as to committal, see *ante*, pp. 758, 759.

Whereas

[*If awarded by a judgment, say* (*l*):] by a certain judgment made by our High Court of Justice on the —— day of ——, 187— [*Date of judgment*],

[*But if awarded on motion* (*ll*) *say*:] upon motion made unto our High Court of Justice on the —— day of ——, 187— [*Date of the order*], by counsel for the plaintiff [*or as may be*],

in an action wherein [*Insert title, as in the judgment or order; as thus*:] D. A. is plaintiff, and you, the said A. B., are defendant, and upon [*&c.: Set forth, in the past tense, the whole of the introductory portion of, or recitals in, the judgment or order; and so much of the mandatory part thereof as relates to the injunction* (*m*)]: We, therefore (*n*), in consideration of the premises, do hereby

[*If perpetual, add*:] from henceforth, and for ever (*o*),

strictly enjoin and restrain you, the said A. B. [*If so in judgment or order, add*: your servants, agents, and workmen; *or as may be*], under the penalty of £—— [*Insert any nominal amount: usually double the estimated amount or value of the property in question in the action, or of the estimated damage*], to be levied upon your [*If more than one, add*: and each and every of your] lands, goods, and chattels to our use, from [*Repeat the mandatory part of the judgment or order relating to the injunction.*]

Witness [*&c.: Conclude as in* No. 1278 *ante*].

1626.
Indorsement on writ (*p*).

[*Same as* No. 94 *or* No. 95 *ante.*]

(*l*) As to granting injunctions at the hearing or trial, see Dan. Pr. 1530—1533.

(*ll*) As to granting injunctions on motion, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66, s. 25, subs. 8; R. S. C. Ord. LII. 4; *ante*, note (*b*) to No. 1609.

(*m*) In so doing, introduce "you" before the name of the party restrained, whenever it occurs; but, in the case of husband and wife, say, "you the said John Jones, and Mary Jones" not "you the said John Jones, and Mary your wife." Substitute also, "our said Court," for "this Court." If the judgment or order relates to other matters than the injunction, so much only of the mandatory part as relates to the injunction need be recited; but, in such case, say: "It was (amongst other things) ordered," &c.; or "our said Court did (amongst other things) order," &c. If, also, in the case of a motion, the injunction was awarded on a day subsequent to that on which the motion was made, instead of the expression "The said Court did order that an injunction," &c., or its equivalent, say: "our said Court did, on the —— day of ——, order that an injunction," &c.

(*n*) If the injunction is awarded conditionally: for instance, upon payment of a sum of money into Court: recite the performance of the condition immediately before these words; as thus: "And whereas the said sum of £—— hath been duly paid into Court, to the credit of the said action: as by the certificate of the Paymaster-General appears."

(*o*) As to perpetual injunctions, see Dan. Pr. 1530—1533.

(*p*) See Dan. 1525; Cons. Ord. III. 2, 5.

1627. Docket (*q*).

The Queen, and so forth.

To [*Set out verbatim the whole of the writ, and conclude thus :*] Witness, *&c.*

1628. Affidavit of service of writ.

Formal parts : see ante No. 693.

I did, on the —— day of ——, 187—, serve the above-named defendant A. B. with the writ of injunction issuing out of, and under the seal of, this honourable Court, now produced and shown to me, and marked A. (*r*), by delivering a true copy of the said writ to, and leaving the same with, the said defendant A. B. personally at [*State where*] ; and I, at the same time, produced and showed to the said defendant A. B. the said original writ so under seal as aforesaid. At the time of the service aforesaid there was on the said original writ, and on the copy thereof so served as aforesaid, an indorsement in the words and figures following ; that is to say : [*Set out a copy of the indorsement*].

1629. Notice of motion to dissolve an interlocutory injunction (*s*).

Formal parts : see ante No. 1571.

on the part of the defendant A. B., that the injunction awarded by the order in this action, dated the —— day of ——, 187—, may be dissolved.

1630. Notice of motion to discharge, for irregularity, order awarding injunction (*t*).

Formal parts : see ante No. 1571.

on the part of the defendant A. B., that the order dated the —— day of ——, 187—, made in this action, on the application of the plaintiff, whereby it was ordered that [*State what*], may be discharged for irregularity : with costs to be paid by the plaintiff to the said defendant.

(*q*) See Dan. Pr. 1525 ; and *ante* No. 1625, note (*k*). The docket may consist of an entire copy of the writ of injunction. The docket must be written on brief paper ; and it answers the purpose of the *præcipe* required on issuing writs in other cases.

(*r*) For form of memorandum of exhibit, see *ante* No. 723.

(*s*) See Dan. Pr. 1527. For order in like case, see Seton, ed. 4, 291, No. 1. As to applications to dissolve, see Dan. Pr. 1526—1529. As to obtaining leave to give short notice of the motion, see Dan. Pr. 1527 ; and *ante* No. 1571, note (*t*) ; and as to the evidence on, and hearing of, the application, Dan. Pr. 1528 ; 15 & 16 Vict. c. 86, s. 59.

(*t*) See Dan. Pr. 1528, 1536. As to when the motion should be made in this form, see *Ibid.*, 1528.

Section II.—Mandamus (*a*).

1630 a. Indorsement on writ of summons of claim of a writ of *mandamus* (*aa*).

The plaintiff's claim is for a writ of *mandamus* commanding the defendant C. D. to [*Here state the duty to be fulfilled*].

1631. Notice of motion for a *mandamus* to issue (*b*).

Formal parts: see ante No. 1571.

on the part of the plaintiff [*or as may be*], that a writ of *mandamus* may be ordered to issue commanding the defendant C. D. [*or as may be*] to [*Here state the duty to be fulfilled*].

(*a*) As to the writ of *mandamus*, see C. L. P. Act, 1854 (17 & 18 Vict. c. 125), ss. 68 to 74; C. L. P. Act, 1860 (23 & 24 Vict. c. 126), s. 32; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8; *Benson* v. *Paull*, 6 E. & B. 273; *Norris* v. *Irish Land Co.*, 8 E. & B. 512; Chitty's Arch. 1100 to 1102; Lush. Pr. pp. 1033, 1034; Day, C. L. P. Acts, 319 to 323. A *mandamus* may be granted in every proceeding, and not merely where an action is pending; *Paris Skating Rink Co.*, 6 Ch. D. 731. As to directing the act required to be done, to be done by the plaintiff, or by some other person appointed by the Court, at the expense of the defendant, see C. L. P. Act, 1854, s. 74.

(*aa*) Where the obtaining of a *mandamus* is a substantial object of the action, the writ of summons should be endorsed with a claim for the writ; R. S. C. Ord. II. 1; *Ibid.*, Ord. III. 1, 2, 3, ; *Colebourne* v. *Colebourne*, 1 Ch. D. 690.

(*b*) A *mandamus* may be granted by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court may think just; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8. An application for a *mandamus* may be made by any party; R. S. C. Ord. LII. 4; if the application be by the plaintiff, it may be either *ex parte* or upon notice; *Ibid.*; if made by any other party, it must be made on notice to the plaintiff, and may be made at any time after appearance by the party making the application; *Ibid.*

1632.
Writ of *mandamus* (*c*).

[*Proceed as in* No. 1278 *ante, down to* "Defender of the Faith;" *and continue thus:*]

To C. D., of ——, in the county of —— (*d*), greeting:

Whereas

[*If the writ is awarded at the trial* (*e*), *say:*] by a certain judgment made by our High Court of Justice on the —— day of ——, 187— [*date of judgment*]

[*But if awarded on motion* (*f*) *say:*] upon motion made unto our High Court of Justice on the —— day of ——, 187— [*date of order*], by counsel for the plaintiff [*or as may be*]

in a certain action there depending wherein A. B. is plaintiff, and you, the said C. D., are defendant, and upon [*&c.: set forth, in the past tense, the whole of the introductory portion of or recitals in the judgment or order; and so much of the mandatory part as relates to the writ of mandamus* (*g*)].

We therefore, in consideration of the premises, do hereby command you, the said C. D., that you do [*Here state the act required to be performed, as in the judgment or order*]. And we do hereby further command you, that you do pay unto the said A. B. the sum of £——, being the amount allowed by C. S., esquire, one of the Taxing Masters of our said Court, to the said plaintiff [*or as may be*] for his costs of preparing, issuing, and serving this writ (*h*). And in what manner you shall have executed this our writ make

(*c*) As to the form of a writ of *mandamus*, see C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 72. The writ should be written on parchment in words at length. On issuing it a fee is payable of £1 on the higher scale, and 10*s.* on the lower scale, by means of a stamp impressed upon a *præcipe;* Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522; for form of *præcipe*, see *post* No. 1634. Every copy for service should be a full copy of the original, including the indorsement thereon. The writ should be served in the same manner as a writ of injunction, as to which, see Dan. Pr. 1526; for form of affidavit of service of the writ, see *ante* No. 1628. As to the force and effect of a writ of *mandamus*, see C. L. P. Act, 1854 (17 & 18 Vict. c. 125) s. 73; in case of disobedience the writ may be enforced by attachment; *Ibid;* and see C. L. P. Act, 1860 (23 & 24 Vict. c. 126), s. 33; as to attachment and committal to prison, see *ante* pp. 749—761. As to the return to a writ of *mandamus*, see C. L. P. Act, 1854, s. 72.

(*d*) The writ should be directed to the party ordered to do the act; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 72.

(*e*) As to granting the writ at the hearing or trial, see C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 71.

(*f*) As to granting the writ on motion, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8; R. S. C. Ord. LII. 4; note (*b*) to No. 1631 *ante*.

(*g*) As to the mode of reciting the judgment or order, see note (*m*) to No. 1625 *ante*.

(*h*) See the C. L. P. Act, 1860 (23 & 24 Vict. c. 126), s. 32; as to the mode of enforcing the payment of the costs, see *Ibid.*, and see *ante*, note (*a*) at p. 687.

appear to us in our said Court forthwith [*Or*, on the —— day of ——, 187—] (*j*), and have there then this writ.

Witness [*Conclude as in* No. 1278 *ante*].

1633.
Indorsement on writ (*k*).

[*Same as* No. 94 *or* No. 95 *ante*.]

1634.
Præcipe for writ (*l*).

Title as in No. 1277 *ante*.

Seal, in pursuance of order dated the —— day of ——, 187—, a writ of *mandamus* directed to [*State whom*], commanding him to [*State what*].

Returnable forthwith [*Or*, on the —— day of ——, 187—].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing writ; see ante* No. 92.]

SECTION III.—RESTRAINING ORDERS UNDER 5 VICT. C. 5, S. 4 (*a*).

1635.
Motion paper for a restraining order (*b*).

In the High Court of Justice,
Chancery Division (*c*).
[*Name of Judge* (*d*).]

In the matter of the Act of Parliament, 5th Victoria, chapter 5, intituled "An Act to make further provisions for the administration of justice"; and in the matter of A. B.

Mr. C.

To move on behalf of the said A. B., of [*residence and addition*],

(*j*) As to the return to the writ, and obtaining further time to make the return, see C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 72.

(*k*) See Cons. Ord. III. 2, 5.

(*l*) As to the stamp to be impressed on the *præcipe*, see note (*c*) to No. 1632 *ante*.

(*a*) See Dan. Pr. 1537—1540; 5 Vict. c. 5, s. 4; Seton, ed. 4, 283—285. As to the contents of the affidavit in support of the application, see Dan. Pr. 1539; 1 Hare, 585, 586; 1 Y & C. C. C. 2. As to service of the order, see Dan. Pr. 1539.

(*b*) See Dan. Pr. 1538, 1539. The application is made *ex parte*.

(*c*) See Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), s. 11; R. S. C. Ord. V. 4.

(*d*) See Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 33, 42; R. S. C. Ord. V. 4, 4*a*; Cons. Ord. VI. 6.

for an order to restrain the Bank of England [*or as may be*] from permitting the transfer of £——, consolidated £3 per cent. annuities [*or as may be*], standing in the name of C. D. in their books; and from paying any dividend due, or to become due thereon (*e*).

An affidavit in support accompanies.

1636. Petition for the like (*b*).

In the High Court of Justice,
Chancery Division (*c*).
[*Name of Judge* (*d*).]
[*Title as in* No. 1635 *ante.*]

To Her Majesty's High Court of Justice.

The humble petition of the above-named A. B., of [*residence and addition*].

Showeth as follows:

1. 2. 3. [*Set forth, concisely, in numbered paragraphs, the circumstances on which the petitioner relies to induce the Court to make the order.*]

Your petitioner therefore humbly prays, that the Governor and Company of the Bank of England [*or as may be*] may be restrained from permitting the transfer of the said £—— consolidated £3 per cent. annuities [*or as may be*], and from paying any dividend due or to become due thereon, until further order.

And your petitioner will ever pray, &c.

1637. Notice of motion to discharge the order (*f*).

Formal parts: see ante No. 1571.

on the part of C. D., of [*residence and addition*], that the order in this matter dated the —— day of ——, 187—, whereby it was ordered that [*Recite the mandatory part of the order*], may be discharged: with costs to be paid by the said A. B. to the said C. D.

(*b*) See note (*b*) to No. 1635 *ante.*
(*c*) See note (*c*) to No. 1635 *ante.*
(*d*) See note (*d*) to No. 1635 *ante.*
(*e*) For other formal parts of the motion paper, see *ante* No. 1570.
(*f*) See Dan. Pr. 1539.

Section IV.—Writ of Distringas (*f*).

1638.

Affidavit by the applicant for the writ (*g*).

In the High Court of Justice,
Chancery Division.

[*Insert the name or names of the person or persons on whose behalf the writ is sued out; and, if the applicant is under disability, add a next friend* (*h*)*: as thus:*]

A. B., and C. D.

Or, A. B., an infant, by C. D., of [*residence and addition*], his next friend.

Or, A. B., a person of unsound mind not so found, by C. D., of, *&c.*, his next friend.

v.

The Governor and Company of the Bank of England [*or as may be* (*j*)].

I, the above-named A. B., of [*residence and addition*], do solemnly swear, that according to the best of my knowledge, information, and belief, I am

[*If so:*] together with the above-named C. D. of [*residence and addition*],

beneficially interested in the stock hereinafter particularly described; that is to say: [*Here specify the amount of the stock to be affected by the writ, and the name or names of the person or persons, or body politic or corporate, in whose name or names the same shall be standing*].

Sworn [*&c.: see ante* No. 696]

(*f*) As to the writ of *distringas* generally, see Dan. Pr. 1540—1543; 5 Vict. c. 5, s. 5; Cons. Ord. XXVII. 1, 2; R. S. C. Ord. XLVI. 2; Seton, ed. 4, 285.

(*g*) See Dan. Pr. 1540, 1541; Cons. Ord. XXVII. 2. Where the applicant is under disability, or a mere trustee, the affidavit is usually made by the solicitor. As to the person to make the affidavit, in general, see Dan. Pr. 1541.

(*h*) The written authority of the next friend to use his name is not required to be filed or produced; Dan. Pr. 1541.

(*j*) As to the companies against which the writ may be issued, see Dan. Pr. 1540; but see R. S. C. Ord. XLVI. 2.

1639.
Affidavit by the applicant's solicitor (*k*).

In the High Court of Justice,
Chancery Division.
[*Title as in* No. 1638 *ante.*]

I, E. F., of [*place of business*], gentleman, the solicitor in this matter for the above-named A. B. (and C. D.), do solemnly swear, that, according to the best of my knowledge, information, and belief, the above-named A. B. of [*residence and addition*]
[*If so:*] and the above-named C. D., of, *&c.*,
[*If the applicant is a trustee only, say:*] is trustee under the will of X. Y., deceased [*or as may be*], for and on behalf of C. D. (and G. H.): who
is [*Or,* are] beneficially [*Continue as in* No. 1638 *ante, to the end.*]

1640.
Præcipe for the writ (*l*).

In the High Court of Justice,
Chancery Division.

A. B.
v.
Governor and Company of the Bank of England [*or as may be* (*o*).]

Seal *distringas*, on behalf of A. B., to restrain transfer of stock.

Returnable —— day of ——, 187—.
Dated —— day of ——, 187—.
[*Name, &c., of solicitor or party issuing the writ: see ante* No. 92].

1641.
The writ (*m*).

Victoria [*&c.: see ante* No. 1278].
To the sheriffs of London [*or as may be* (*n*)], greeting:
We command you, that you omit not by reason of any liberty, but that you enter the same, and distrain the Governor and Company of the Bank of England (*o*), by all their lands and chattels in

(*k*) See Dan. Pr. 1541; Cons. Ord. XXVII. 2; *ante*, note (*y*) to No. 1638.

(*l*) See Dan. Pr. 1541.

(*m*) See Dan. Pr. 1541; 5 Vict. c. 5, Sched. 1. The writ must be engrossed on parchment. On issuing the writ, a fee is payable of 10*s.* on the higher scale, and 5*s.* on the lower scale, by means of a stamp impressed upon the *præcipe;* Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522. The original of the affidavit in support must be produced to the officer at the time the writ is presented for sealing, and must be left with him to be filed; but no office copy need be taken.

(*n*) The writ must be directed to the sheriff or sheriffs of the county or place in which the chief office of the company to be restrained is situate. For forms of directions of writs to sheriffs, see *ante* No. 364.

(*o*) Or other corporation or company to be restrained; see Dan. Pr. 1540; but see R. S. C. Ord. XLVI. 2.

your bailiwick: so that they or any of them do not intermeddle therewith, until we otherwise command you; and that you answer us the issues of the said lands: so that they do appear before us in the Chancery Division of our High Court of Justice, on the —— day of —— (*p*), in a certain action lately commenced against them and other defendants, before us in our said High Court of Justice by A. B., complainant; and further to do and receive what our said Court shall then and there order in the premises; and that you then have there this writ. Witness [*&c: Conclude as in* No. 1278 *ante*].

1642.
Indorsement on the writ (*q*).

[*Same as* No. 94 *or* 95 *ante.*]

1643.
Notice to accompany the writ (*r*).

[*Title as in affidavit; see ante* No. 1638.]

Take notice that the *distringas* issued in this action, and served herewith, has been so issued, and is served, for the purpose of preventing and restraining the transfer of all or any part of the [*Describe the stock, &c., upon which the distringas is to operate; and in whose name or names it is standing. If it is desired to prevent the payment of dividends, add:* and the payment of any dividend due or to become due thereon]. And you are requested not to permit the transfer of the said stock [*If so:* and not to pay any such dividend] until the order of this honourable Court can be obtained.

Dated this —— day of ——, 187—.

[*Name, &c., of solicitor or party issuing the writ: see ante* No. 92].

To the Governor and Company of the Bank of England [*or as may be*]; and to their solicitor, secretary, and all others whom it may concern.

1644.
Request that transfer, &c., may be permitted, notwithstanding the writ (*s*).

I request that you will permit me [*Or*, G. H.] to transfer all or any part of the £—— consolidated £3 per cent. annuities [*or as may be*] standing in my name [*or as may be*] in your books [*If so:* and to receive the dividends due, and to become due thereon] notwithstanding the *distringas* laid thereon by or on behalf of A. B.,

(*p*) The writ is made returnable on a day certain; there must not be less than eight clear days between the teste and the return; Dan. Pr. 1541.

(*q*) See Dan. Pr. 1541; Cons. Ord. III. 2, 5.

(*r*) See Dan. Pr. 1541; Cons. Ord. XXVII. 4. As to the mode of service of the writ and notice, see Dan. Pr. 1541.

(*s*) See Dan. Pr. 1542; Cons. Ord. XXVII. 4.

on the —— day of ——, 187—. Dated this —— day of ——, 187—.

G. H., of [*residence and addition*].
[*Or*, L. M., of [*place of business*], solicitor for the said G. H.]

To the Governor [*&c.: as in* No. 1643 *ante*].

1645.
Petition of course to discharge the writ (*t*).

Title: see ante No. 1638; *other formal parts: see ante* No. 1576.

The humble petition of the above named plaintiff.

Showeth as follows:

1. A writ of *distringas* was issued in this action on the —— day of ——, 187—, against the defendants, at the instance of your petitioner, with reference to the sum of £——, consolidated £3 per cent. annuities [*or as may be*], standing in the books of the defendants in the name of G. H.;

[*If so:*] and the dividends due and to become due thereon; and the said distringas was on or about the —— day of ——, 187—, lodged with the said defendants.

2. Your petitioner is now desirous to have the said writ discharged.

Your petitioner therefore humbly prays, that the said writ of *distringas* may be discharged accordingly.

And your petitioner will ever pray, &c.

1646.
Notice of motion to discharge the writ (*u*).

Formal parts: see ante No. 1571.

on the part of G. H., of [*residence and addition*], that the writ of *distringas* issued in this action on or about the —— day of ——, 187—, against the defendants, at the instance of the plaintiff, with reference to the sum of £——, consolidated £3 per cent. annuities [*or as may be*], standing in the books of the defendants in the name of the said G. H. [*or as may be*],

[*If so:*] and the dividends due, and to become due thereon may be discharged: with costs to be paid by the said plaintiff to the said G. H.

(*t*) See Dan. Pr. 1542; Cons. Ord. XXVII. 3. For orders in like case, see *Equitable Reversionary Interest Society* v. *Bank of England*, M. R. 16 Dec. 1869, Rolls' Lib.; *Cox* v. *Rhymney Iron Company*, M. R. 27 April, 1870, Rolls' Lib.

(*u*) See Dan. Pr. 1542; Cons. Ord. XXVII. 3.

Section V.—Stop Orders (*v*).

1647.
Petition for a stop order (*x*).

Formal parts: see ante No. 1578.

The humble petition of A. B., of [*residence and addition* (*y*)].

Showeth as follows:

[*Show the assignor's interest in the fund in Court* (*z*); *as thus:*]

1. W. O., the testator in the pleadings in this action named, bequeathed to trustees the sum of £10,000 reduced £3 per cent. annuities, on trust for his daughter H. D., widow, for her life, and, at her decease, for her children in equal shares.

2. The said £10,000 reduced £3 per cent. annuities is now in Court on the credit of this action, B. *v.* D., 1877, B. 100, "The account of H. D. and her children," and by an order made in the said action, dated the —— day of ——, 187—, the dividends to accrue during the life of the said H. D. on the said fund are directed to be paid to her.

3. The above-named defendant C. D., as one of the three children of the said H. D., is entitled in remainder, expectant on the death of the said H. D., to one-third share of the said reduced annuities.

[*Show the assignment to, or other title of, the assignee* (*z*); *as thus:*]

4. By an indenture dated the —— day of ——, 187—, and made between the said C. D., of the one part, and your petitioner of the other part, the said C. D., for the consideration therein mentioned, assigned his said one-third share of the said £10,000 reduced annuities, unto your petitioner, his executors, administrators, and assigns, absolutely, by way of sale [*Or*, mortgage];

(*v*) As to stop orders, see generally, Dan. Pr. 1543—1547; Seton, ed. 4, 300—305. As to charging orders on funds in court, and stop orders in aid of charging orders, see *ante* No. 1335, and notes thereto. As to the liability for costs of a person obtaining a stop order, see Dan. Pr. 1545; Cons. Ord. XXVI. 1. As to lodging the order in the Chancery Pay Office, see Dan. Pr. 1545. As to the right of an assignee to consent for his assignor, see *Ibid.*, 1544; and as to the costs of a stop order, see *Ibid.*, 1546. As to a stop order on documents in Court, see Dan. Pr. 1547; Seton, ed. 4, 302.

(*x*) See Dan. Pr. 1544. An application for a stop order should generally be by summons, and not by petition, and a petitioner will not get his costs; *Walsh* v. *Wason*, 22 W. R. 676. For forms of summons, see *post* Nos. 1649, 1650.

(*y*) The assignor and assignee may be co-petitioners.

(*z*) The petition must show the title of the person, the payment of whose fund is intended to be restrained: although it is not absolutely necessary that it should show the particular share of the fund to which he is entitled; and it must also show the title of the assignee: see Dan. Pr. 1544.

and authorised him and them to receive and give discharges for the said share [*or as may be*].

Your petitioner therefore humbly prays, that no part of the one-third share of the defendant C. D. of and in the said £10,000 reduced annuities, may henceforth be sold, transferred, or otherwise dealt with: and that no part of any dividends to accrue in respect of such share after the death of the said H. D., may be paid out or otherwise dealt with: without notice to your petitioner;

Or that [*Continue as in* No. 1578 *ante, and add foot note* No. 1579 *ante.*]

1649. Summons for a stop order on an entire fund in Court (*a*).

Formal parts; see ante No. 881.

on the part of A. B., of [*residence and addition*], that the [*Describe the fund to be affected, and how it stands in the Paymaster-General's books: according to his voluntary certificate; as thus:*] £——, consolidated £3 per cent. annuities [*Or*, £——, cash] in Court on the credit of this action, B. *v.* D., 1877, B. 100, "The account of C. D.," to which the plaintiff C. D.

Or, defendant C. D.; *Or*, C. D., of [*residence and addition*], is [*If so:* or may be or become] entitled, or any part thereof,

[*If so:*] or any dividends hereafter to accrue due on the said stock, or any part thereof,

may not be transferred, sold, paid out, or otherwise disposed of, without notice to the said A. B.

1650. Summons for a stop order on a share of a fund in Court (*b*).

Formal parts: see ante No. 881.

on the part of A. B., of [*residence and addition*], that the one third share to which the plaintiff C. D.

Or, defendant, C. D.; *Or*, C. D., of [*residence and addition*], is [*If so:* or may be or become] entitled of the [*Describe the fund, and action, &c., as in* No. 1649 *ante*], or any part thereof,

[*If so:*] or of any interest hereafter to accrue due on the said annuities, or any part thereof,

may not be transferred, sold, paid out, or otherwise disposed of, without notice to the said A. B.

(*a*) See Dan. Pr. 1544. The assignor and assignee may be applicants. For order in like case, see Seton, ed. 4, p. 300, No. 1.

(*b*) See *ante* No. 1649, n. (*a*). For orders in like case, see *Glanvill* v. *Glanvill*, M. R. at Chambers, 7 Nov. 1865, Reg. Lib. A. 2505; *Bedford* v. *Bedford*, M. R. at Chambers, 8 Aug. 1870, Reg. Lib. A. 2178; and Seton, ed. 4, p. 300, No. 3. For other forms of orders, see Seton, ed. 4, pp. 300—303.

1651.
Affidavit in support of petition, or summons (*c*).

Formal parts: see ante No. 693.

1. 2. [*Show titles of assignor and assignee: see ante* No. 1647, *paragraphs* 1—4.]

3. [*Prove assignor's execution of the assignment; as thus:*] The said indenture is the parchment writing, marked A., now produced and shown to me (*d*). I saw the said C. D. execute the said indenture. The name or signature "——," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said C. D.; and the name or signature "——," subscribed to the attestation of such signature indorsed on the said indenture, is of my proper handwriting.

Or, I am well acquainted with the handwriting of the said C. D.: having seen him write. The name or signature "——," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said C. D.

4. [*Show means of knowledge.*]

1652
Summons for a further stop order, on assignment of interest by restraining party (*f*).

Formal parts: see ante No. 881.

on the part of L. M., of [*residence and addition*], that the [*Describe the fund, or share of fund, restrained: see ante* Nos. 1649, 1650], may not be transferred, sold, paid out, or otherwise disposed of, without notice to the said L. M.: instead of A. B., as directed by the order dated the —— day of ——, 187— [*former stop order*].

1653.
The like (*g*).

Formal parts: see ante No. 881.

on the part of L. M., of [*residence and addition*], that the said L. M. may be substituted for A. B., in the order dated the —— day of ——, 187— [*former stop order*], named, as the person to whom notice is to be given before any transfer, sale, payment out, or other disposition is made of the annuities [*or as may be*], in the said order mentioned.

(*c*) See Dan. Pr. 1544. The title of the assignor may often be established by production of documents in the action, without an affidavit thereof. The application must, in every case, be supported by the Paymaster-General's voluntary certificate of the fund.

(*d*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*f*) See Dan. Pr. 1547; *Robertson* v. *Wynch*, M. R. at Chambers, 25 Feb. 1861, Reg. Lib. B. 383.

(*g*) See Dan. Pr. 1547; *Touch* v. *Cheese*, M. R. at Chambers, 26 Jan. 1865, Reg. Lib. B. 232.

1654.

Petition for the like order (*h*).

Formal parts : see ante No. 1578.

The humble petition of L. M., of [*residence and addition*].

Showeth as follows :

1. [*Recite the existing stop order; as thus :*] By an order dated the —— day of ——, 187—, and made in this action on the petition [*Or, if on summons, say :* on the application] of A. B., it was ordered that [*Set out so much of the order as imposed the restraint*].

2. [*Show the title of the petitioner : as thus :*] By an indenture dated the —— day of ——, 187—, and made between the said A. B. of the first part, the said C. D. of the second part, and your petitioner of the third part, for the consideration therein mentioned, the said A. B., with the privity of the said C. D., assigned, and the said C. D. assigned and confirmed, the said (one-third share of the said) consolidated annuities, unto your petitioner, his executors, administrators, and assigns, absolutely, by way of sale [*Or,* mortgage] ; and thereby authorised him and them to receive and give discharges for the same.

3. The said £——, consolidated £3 per cent. annuities, is now in Court on the credit of this action [*or as may be*].

Your petitioner therefore humbly prays, that (the share of the said C. D. of) the said £——, consolidated £3 per cent. annuities [*or as may be*], or any part thereof,

[*If so :*] or any dividends hereafter to accrue thereon, or any part thereof,

may not be transferred, sold, paid out, or otherwise disposed of, without notice to your petitioner : instead of the said A. B., as directed by the said order of the —— day of ——, 187—.

[*Or,* that your petitioner may be substituted for the said A. B., as the person to whom notice is to be given, before any transfer, sale, payment out, or other disposition is made of the said £——, consolidated £3 per cent. annuities [*or as may be*]] ;

Or that [*&c. : Continue as in* No. 1578 *ante, to the end ; and add foot note,* No. 1579].

(*h*) See Dan. Pr. 1547 ; and note (*x*) to No. 1647 *ante.* The original and new assignees may be co-petitioners.

1655.
Affidavit in support of summons, or petition (*i*).

Formal parts : see ante No. 693.

1. [*Show title of the applicant : see ante* No. 1654, *paragraph* 2 (*k*).]

2. [*Prove execution by the assigning parties ; as thus :*] The said indenture dated the —— day of ——, 187— [*assignment*], is the parchment writing, marked B., now produced and shown to me (*l*). I saw the said A. B., and C. D., respectively execute the said indenture marked B. The name or signature "——," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said A. B. The name or signature "——," subscribed to the said indenture as another of the parties executing the same, is of the proper handwriting of the said C. D. The name or signature "——," subscribed to the attestation indorsed on the said indenture of the signatures thereto of the said A. B., and C. D., is of my proper handwriting.

Or, I am well acquainted with the handwriting of the said A. B., and C. D., respectively : having seen them respectively write. The name or signature "——," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said A. B. ; and the name or signature "——," subscribed to the said indenture as another of the parties executing the same, is of the proper handwriting of the said C. D.

3. [*Show means of knowledge.*]

1656.
Petition, to discharge a stop order (*m*).

[*Proceed as in* No. 1647 *ante, to the end of paragraph* 4 (*n*).]

5. By an order dated [*&c. : recite the stop order*].

6. [*State grounds of applying to discharge the order.*]

Your petitioner therefore humbly prays, that the said order of the —— day of ——, 187— [*Stop order*]

Or, that so much of the said order dated, *&c.*, as directs that, *&c.*

may be discharged : with costs to be paid by the said A. B. to your petitioner [*or as may be*].

Or that [*&c. : Conclude as in* No. 1578 *ante ; and add foot note,* No. 1579].

(*i*) See Dan. Pr. 1547.

(*k*) As the former stop order, or an office copy of it, must be produced on the application, the purport of the order need not be set out in the affidavit.

(*l*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*m*) See Dan. Pr. 1547 ; Seton, ed. 4, p. 303.

(*n*) The statements to be inserted in the petition, and the order to be prayed for, will depend on the grounds on which a discharge of the stop order is sought.

1657.

Summons for the like (*o*).

Formal parts: see ante No. 881.
on the part of C. D., in the order dated the —— day of ——, 187—, named

Or, C. D., of [*residence and addition*]
that the (said) order dated the —— day of ——, 187—, whereby it was ordered

Or, that so much of the order dated the —— day of ——, 187—, as directs
that [*Recite, concisely, the order or restraining clause*] may be discharged [*If so:* with costs to be paid by the said A. B. to the said applicant].

(*o*) See Dan. Pr. 1547. For order in like case, see *Bouquet* v. *Waller*, V. C. K. at Chambers, 12 Dec. 1865, Reg. Lib. A. 2578; and see Seton, ed. 4, p. 303.

CHAPTER XXV.

RECEIVERS (*a*).

SECTION I.—APPOINTMENT OF RECEIVER (*b*).

1657 a.
Indorsement on writ of summons of claim for appointment of a receiver (*bb*).

The plaintiff's claim is for the appointment of a proper person to receive [*state what*; see *post* Nos. 1658, 1659.]

1658.
Motion paper for interim receiver (*c*).

Formal parts: see ante, No. 1570.

To move on behalf of the plaintiff, that the plaintiff [*or as may be*] may be appointed to receive [*State what; as thus:*] the furni-

(*a*) As to receivers, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8; Dan. Pr. 1563—1618; Seton, ed. 4, pp. 410—454; Kerr on Receivers. A receiver may be appointed at the instance of a legal mortgagee; *Pease* v. *Fletcher*, 1 Ch. D. 273.

(*b*) See Dan. Pr. 1582—1593; Seton, ed. 4, pp. 410—436; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8; *Pease* v. *Fletcher*, 1 Ch. D. 273; *re H.*, *H.* v. *H.*, 1 Ch. D. 276; *Sargant* v. *Reed*, 1 Ch. D. 600; *Hyde* v. *Warden*, 1 Ex. D. 309; *Brand* v. *Mitson*, 24 W. R. 524; *Melhuish* v. *Milton*, 24 W. R. 679; *Taylor* v. *Eckersley*, 2 Ch. D. 302; *Peek* v. *Trinsmaran Iron Co.*, 2 Ch. D. 115; *Boyle* v. *Bettws Colliery Co.*, 2 Ch. D. 726.

(*b b*) Where the appointment of a receiver is a substantial object of the action, the writ of summons should be indorsed with a claim for such appointment; R. S. C. Ord. II. 1; *Ibid.*, Ord. III. 1, 2, 3; *Colebourne* v. *Colebourne*, 1 Ch. D. 690.

(*c*) See Dan. Pr. 1582, 1583. A receiver may be appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court may think just; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. 8. Under this enactment, there is no limit to the power of the Court to appoint a receiver on an interlocutory application, except that such power is only to be exercised where "just or convenient"; *Gawthorpe* v. *Gawthorpe*, W. N. (1878), 91. An application for an order under this section may be made by any party; R. S. C. Ord. LII. 4; *Sargant* v. *Reed*, 1 Ch. D. 600; if made by the plaintiff, it may be either *ex parte* or upon notice; R. S. C. Ord. LII. 4; *Brand* v. *Mitson*, 24 W. R. 524; *Melhuish* v. *Milton*, 24 W. R. 679; *re H.*, *H.* v. *H.* 1 Ch. D. 276; *Taylor* v. *Eckersley*, 2 Ch. D. 302; if the application is made by any other party than the plaintiff, it must be made

ture and chattels in the indorsement of claim on the writ of summons mentioned, until the —— day of ——, 187—.

1659. Notice of motion or summons for a receiver (*c*).

Formal parts : see ante No. 1571 *or* 881.

on the part of the plaintiff [*or as may be*], that a proper person

Or, that L. M., of [*residence and addition*], on giving security (*d*),

may be appointed [*State for what purpose ; as thus :*]

to receive the rents and profits of the real and leasehold estates, and to collect and get in the outstanding personal estate, of A. B., the testator in the writ of summons named :

[*If of real or leasehold estates, add :*]

And that the tenants of the said estates may be ordered to attorn, and pay their rents in arrear and growing rents to such receiver (*e*) :

[*If of outstanding personal estate, add :*]

And that the defendant C. D., the executor of the will [*Or*, administrator of the effects] of the said A. B., may be ordered to deliver over to such receiver all securities in his hands for such outstanding personal estate, together with all books and papers relating thereto [*or as may be* (*f*)] :

And that such receiver may be directed from time to time to pass his accounts, and pay his balances into Court, to the credit of this action ; and that such balances may be laid out in consolidated £3 per cent. annuities, and accumulated (*g*).

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on notice to the plaintiff, and may be made at any time after appearance by the party making the application ; R. S. C. Ord. LII. 4. The application may be made by summons at Chambers ; *Macaulay* v. *Pocock*, V.-C. *Hall*, at Chambers, 28 Nov. 1877 ; reported *Law Times*, 8 Dec. 1877, p. 100. The application must be supported by evidence of the facts relied on as rendering the appointment proper ; Dan. Pr. 1584. For form of order on *ex parte* application, see Seton, ed. 4, p. 410, No. 3 ; for form of order on summons at Chambers, see Seton, ed. 4, 413, No. 9 ; and see *post* No. 1672 ; for forms of orders in other cases, see Seton, ed. 4, pp. 410 *et seq.*

(*c*) See note (*c*) to No. 1658 *ante*.

(*d*) A receiver appointed by name, on his giving security, is not receiver until security is given ; *Edwards* v. *Edwards*, 2 Ch. D. 291 ; reversing S. C. 1 Ch. D. 454.

(*e*) See Dan. Pr. 1586—1590 ; Seton, ed. 4, 410, No. 1. As to the form, where any of the parties to the record are in possession, see Dan. Pr. 1590 ; Seton, ed. 4, p. 418, No. 20 ; *Ibid.*, p. 420, No. 23. As to the mode of enforcing an order for the delivery of the possession of land, see R. S. C. Ord. XLII., 3, 5 ; R. S. C. Ord. XLVII ; note (*a*) at p. 687 *ante*.

(*f*) See Dan. Pr. 1586, 1598 ; Seton, ed. 4, 410, No. 1. As to the mode of enforcing an order for the delivery of property (other than land), see R. S. C. Ord. XLII. 4, 5 ; R. S. C. Ord. XLVII. ; note (*a*), at p. 687 *ante*.

(*g*) See Dan. Pr. 1586, 1600 *et seq.* ; Seton, ed, 4, 410, No. 1.

1660.

Summons to proceed on order directing a proper person to be appointed receiver (*i*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], to proceed on the judgment [*Or*, order] dated ——, 187—; and that a proper person

Or, that L. M., of [*residence and addition*],

may be appointed receiver pursuant thereto.

1661.

Summons for leave for a party to the action to propose himself as receiver (*k*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*Or*, defendant A. B.], that he may be at liberty to propose himself as the person to be appointed receiver under the judgment [*Or*, order] dated the ——, 187—; but without giving security: he undertaking to act without salary [*or as may be*].

1662.

Proposal for a receiver (*l*).

[*Short title, and reference to the record.*]

The proposal of the plaintiff [*or as may be*], as to the receiver to be appointed pursuant to the judgment [*Or*, order] dated ——, 187—.

The property over which the receivership is to extend is particularised in the affidavit of X. Y., filed ——, 187— [*or as may be*].

The plaintiff [*or as may be*] proposes L. M., of [*residence and addition*], as a proper person to be appointed receiver, as aforesaid.

(*i*) As to the course to be pursued where the order directs a proper person to be appointed receiver, see Dan. Pr. 1586—1588; and *post* Nos. 1660 to 1668; as to the course to be pursued where a receiver is appointed by the order, subject to his giving security, see *post*, note (*u*) to No. 1669. As to the course to be pursued where the application is made by summons at Chambers, see note (*z*) to No. 1671 *post*.

(*k*) See Dan. Pr. 1580. As to when this application is necessary, see *Ibid.* Leave is often given by the judgment or order directing the appointment: *Ibid.* For the principles on which the Court acts in appointing a party receiver, see *Cookes* v. *Cookes*, 2 De G. J. & S. 526; and see *Sargant* v. *Read*, 1 Ch. D. 600; *Hyde* v. *Warden*, 1 Ex. D. 309.

(*l*) See Dan. Pr. 1587.

1663.
Affidavit of the nature and value of the property over which the receivership is to extend (*n*).

Formal parts: see ante No. 693.

1. [*Describe the property, succinctly, as thus:*] The real and leasehold estates of the testator A. B., in the judgment [*Or*, order] in this action dated the ——, 187—, mentioned, consist of the short particulars set forth in the first column of the first part of the schedule hereto. The said estates are in the occupation of the several persons, and at the annual rents, specified in the second and third columns of the said first part. The arrears of rent specified in the fourth column of the said first part are also now due. The outstanding personal estate of the said testator consists of the particulars set forth in the first column of the second part of the said schedule; and the values thereof are set forth in the second column of the said second part.

2. [*Show means of knowledge.*]

The Schedule above referred to.

First Part.

Particulars of estate.	Tenant's name.	Annual rent.	Arrears due.
		£ s. d.	£ s. d.
The Home Farm, at Uxbridge, Middlesex.	John Jones.	300 0 0	75 0 0
&c.	*&c.*	*&c.*	*&c.*

Second Part.

Particulars of outstanding estate.	Value.
	£ s. d.
Book Debts	350 0 0
&c.	*&c.*

1664.
Affidavit of fitness of proposed receiver (*o*).

Formal parts: see ante No. 693.

1. I have for —— years last past known and been well acquainted with L. M., of [*residence and addition*], the person proposed to be appointed, in this action, the receiver of the rents and profits of the real estate, and to get in the outstanding personal estate, of the testator A. B. [*or as may be*].

2. The said L. M. is [*State the trade, business, or profession, if any, of the proposed receiver; and where carried on, and for how long, to the deponent's knowledge*].

3. The said L. M. is a person of respectability and integrity, and of good credit; and in my judgment he is a fit and proper person to be appointed receiver of the said rents and profits, and outstanding estate [*or as may be*].

(*n*) As to the evidence required on an application to appoint a receiver, see Dan. Pr. 1584, 1586, 1587.

(*o*) See Dan. Pr. 1587.

1665.

Recognizance by a receiver and his sureties, pursuant to a judgment or order (*p*).

[*Proceed as in* No. 1117 *ante, to* it was ordered ; *and recite so much of the judgment or order as directs a proper person to be appointed—or as directs that the person therein named be appointed on giving security ; as thus :*]

it was ordered that a proper person should be appointed to receive

Or, that the above-bounden L. M., on first giving security, should be appointed receiver of

the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., the testator in the writ of summons named :

And whereas the Judge to whom the said action is attached hath

[*If the receiver has not been approved by the judgment or order, add :*] approved of the said L. M. as a proper person to be such receiver ; and hath

approved of the above-bounden C. D. and E. F. as sureties for the said L. M. ; and hath also approved of the above-written recognizance, with the underwritten condition, as a proper security to be entered into by the said L. M., C. D., and E. F., pursuant to the said judgment [*Or*, order], and the General Orders of the Court in that behalf : and in testimony of such approbation, the Chief Clerk of the said Judge hath signed an allowance in the margin hereof (*q*) :

Now the condition of the above-written recognizance is such, that if the said L. M. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate, of the said A. B. (*r*), at such periods as the said Judge shall appoint ; and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed, or shall hereafter direct, then the above recognizance shall be void, and of none effect : otherwise the same is to be and remain in full force and virtue.

L. M.
C. D.
E. F. } Taken and acknowledged [*&c. : see ante* No. 1117].

(*p*) See Dan. Pr. 1584, 1585 ; Cons. Ord. XXIV. 1 ; *Ibid.* XLII. 13 ; Regul. 8 Aug. 1857, Sched. No. 13. A receiver appointed by name, upon his giving security, is not receiver until security is given ; *Edwards* v. *Edwards*, 2 Ch. D. 291 ; reversing S. C. 1 Ch. D. 454. The recognizance must be engrossed on parchment, and must bear a 10*s.* stamp impressed thereon or adhesive thereto ; Ord. as to Court Fees, Oct. 1875 ; Ord. as to Fees, April, 1876 ; Wilson, 506, 522. As to enrolling, and vacating the enrolment of a recognizance, see Dan. Pr. 1588 ; Cons. Ord. XLII. 12.

(*q*) For form of memorandum of allowance of the recognizance, see *ante* No. 1117.

(*r*) This must accord with the judgment or order by which the receiver is directed to be appointed.

1666.
Bond by a receiver, and a society or company as his sureties (*s*).

In the High Court of Justice,
Chancery Division.
The —— Society [*Or*, Company, Limited].
Bond No. —.

Know all men by these presents, that I, L. M., of [*address and description*], and We, The —— Society [*Or*, Company, Limited], are jointly and severally bound unto the Right Honourable Sir George Jessel, Knight, the Master of the Rolls, and the Honourable Sir Richard Malins, Knight, the senior Vice-Chancellor of the Chancery Division of Her Majesty's High Court of Justice, in the sum of £—— of lawful money of the United Kingdom of Great Britain and Ireland, to be paid unto the said Sir George Jessel, Knight, and Sir Richard Malins, Knight, or one of them, or the executors or administrators of them, or one of them. For which payment, well and truly to be made, I, the said L. M., for myself, my heirs, executors, and administrators, and every of them, and we, The —— Society [*Or*, Company, Limited], for ourselves and our successors, do bind and oblige ourselves for the whole firmly by these presents.

Sealed with the seal of the said L. M., and also with the seals of ——.

Dated the —— day of ——, in the year of Our Lord 187—.

Whereas by a judgment [*Or*, an order] of the High Court of Justice made in an action wherein A. B. and E. F. are plaintiffs and C. D. and G. H. are defendants, and bearing date the —— day of ——, 187—, it was ordered that [*Recite so much of the judgment or order as directs a proper person to be appointed, or as directs that the person therein named be appointed on giving security*].

And whereas his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——], the Judge to whom the said action is attached, hath approved of the said L. M. as a proper person to be the receiver in the said action, and hath approved of the —— Society [*Or*, Company, Limited], of [*address of chief office*], as sureties for the said L. M. in the sum of £——.

[*If two guarantee societies are sureties, add:*] And whereas the said Judge has also approved of the —— Society [*Or*, Company, Limited] as sureties for the said L. M. in a like sum of £——.

And whereas the said Judge hath also approved of the above bond (*t*) with the under-written condition, together with

[*If two guarantee societies are sureties, add:*] a bond of the said —— Society [*Or*, Company, Limited], dated the —— day of ——, 187—, and numbered ——, for the sum of £—— duly executed under the hand and seal of the said

(*s*) See note (*p*) to No. 1665 *ante*.

(*t*) For form of memorandum of allowance of the bond, see *ante* No. 1117.

L. M., and the hands of two of the directors of the said —— Society [*Or*, and the seal of the said —— Company, Limited], and

a recognizance entered into by the said L. M., bearing date the —— day of ——, 187—, as a proper security to be entered into by the said L. M. and the said Society [*Or*, Company, Limited], pursuant to the said judgment [*Or*, order] and the Consolidated General Orders of the Court in that behalf, and in testimony of such approval the chief clerk of the said Judge hath signed an allowance in the margin hereof, and of the said recognizance respectively (*u*).

Now the condition of the above-written bond or obligation is such, that if the above-bounden L. M., his executors or administrators, or some or one of them do, and shall duly account for what he the said L. M. shall receive or shall become liable to pay as such receiver as aforesaid, at such period and in such manner as the High Court of Justice, or the Judge thereof to whom the said action shall for the time being be attached, shall appoint, and do and shall pay the same as such Court or Judge hath directed, or shall hereafter direct, then the above-written bond or obligation shall be void, or else shall, subject to the provisions hereinafter contained, be and remain in full force and virtue: Provided always, that if the said L. M. shall not, for every successive term of twelve calendar months to be computed from the —— day of ——, 187—, or within fifteen days after the —— day of —— in each and every year, pay or cause to be paid at the office of the said Society [*Or*, Company], the annual sum or premium of £——, then the said Society [*Or*, Company] shall, at any time after such default in payment, be at liberty to apply by summons to the Judge at Chambers to whom the said action shall for the time being be attached, to be relieved from all further liability as such sureties as aforesaid from the final hearing of such summons, and such summons having been served upon such persons as the Judge shall direct, and being finally heard, all further liability of the said Society [*Or*, Company], as such sureties as aforesaid, shall, from and after such final hearing of such summons, or from and after such other time as the Judge shall direct, cease, and determine, save and except in respect of any loss or damage occasioned by any act or default of the said L. M., in relation to his duties as such receiver as aforesaid, previously to such cesser and determination of liability: Provided always, and it is hereby agreed and declared, that this bond is entered into by the said Society [*Or*, Company] on the condition that the capital stock and funds, according to the deed of settlement of the said Society [*Or*, articles of association of the said Company], shall alone be liable to answer and make good all claims in respect of this bond, and and that no director or proprietor of the said Society [*Or*, Company] shall in any manner be personally liable, or subject to any

(*u*) For form of memorandum of allowance of the bond, see *ante* No. 1117.

claims or demands by reason of such bond, beyond the amount unpaid of his or her share or shares of such capital stock or funds: Provided always, that a certificate or certificates under the hand of the chief clerk for the time being of the Judge to whom the said action shall for the time being be attached, of the amount which the said L. M., as such receiver as aforesaid, is liable to pay, and has not paid, shall be sufficient and conclusive evidence against the said L. M., his heirs, executors, and administrators, and against the said Society [*Or*, Company], and also as between the said Society [*Or*, Company], and the said Sir George Jessel, Knight, and Sir Richard Malins, Knight, of the truth of the contents of the said certificate or certificates, and that this bond has become forfeited thereby, to the amount of the sum stated in such certificate or certificates, and shall form a valid and binding charge and claim, not only against the said L. M., his heirs, executors, and administrators, but also against the said Society [*Or*, Company], and the funds and property thereof, without its being necessary for the said Sir George Jessel, Knight, and Sir Richard Malins, Knight, or either of them, their, or either of their, executors or administrators, first to take legal or other proceedings against the said L. M., his heirs, executors, or administrators, for the recovery thereof, and without any further or other proof being given either by or on the part of the said Sir George Jessel, Knight, and Sir Richard Malins, Knight, or either of them, their, or either of their executors or administrators in any action, suit, or proceeding, to enforce this bond against the said Society [*Or*, Company], or against the said L. M., his heirs, executors, or administrators, or by or on the part of the said Society [*Or*, Company] in any action or proceeding against the said L. M., his heirs, executors, or administrators, of the amount of such damage or loss, or that the same has been sustained, incurred, or occasioned, by and through the act or default of the said L. M. while in office: Provided always, and it is further agreed between the said L. M. and the said Society [*Or*, Company], that the said L. M. shall and will on being discharged from his office of, or ceasing to act as, such receiver as aforesaid, forthwith give notice thereof in writing, and also furnish to the said Society [*Or*, Company] free of charge, an office copy of the order of the Court or Judge, discharging him from his office as such receiver as aforesaid: And further that he the said L. M., his heirs, executors, and administrators, shall and will from time to time, and at all times, save, defend, and keep harmless the said Society [*Or*, Company], and their successors, and the property and funds of the said Society [*Or*, Company], from and against all loss and damage, costs and expenses which the said Society [*Or*, Company], or the funds or property thereof, shall or may, or otherwise might at any time sustain or be put unto, or for or by reason or in consequence of the said Society [*Or*, Company] having entered into the above-written bond for and at the request of the said L. M.

In witness whereof the said L. M. hath hereunto set his hand and seal, and S. T. and X. Y., being two directors of the said

Society, have hereunto set their hands [*Or*, and the seal of the said —— Company, Limited hath been hereunto affixed] the day and year first above-written.

1667.
Affidavit of sureties as to their solvency (*r*).

In the High Court of Justice,
Chancery Division.
[*Title of the action, and reference to the record.*]

We, C. D., of [*residence and addition*], and E. F., of, *&c.*, the proposed sureties for L. M., of [*residence and addition*], the person proposed to be appointed receiver in this action, severally make oath and say, as follows:

1. First, I the said C. D., for myself say, that I am well and truly worth the sum of £—— [*Insert the amount for which he is to be bound*], after payment of all my just debts and liabilities.

2. And I the said E. F., for myself say, that I am [*&c.: as above, to* liabilities].

Sworn [*&c.: see ante* No. 696 *or* 698].

1668.
Summons to appoint receiver, after security given (*s*).

Formal parts: see ante No. 881.

on the part of L. M., of [*residence and addition* (*t*)], that the applicant: having been approved as a proper person to be appointed to receive the [*Follow the words of the judgment or order directing the appointment of a receiver*], pursuant to the judgment [*Or*, order] dated the ——, 187—, and having given security, pursuant to the 24th of the Consolidated General Orders, rule one, by entering into a recognizance, together with C. D. and E. F., as his sureties, dated the ——, 187—, which has been approved by the Judge, and duly enrolled: may be appointed to receive the [*Follow the words of the judgment or order, as above*]. And that the said L. M. may on the ——, 187—, and on the same day in every succeeding year [*or other period fixed*], leave at the Chambers of the Judge his annual

(*r*) See Dan. Pr. 1585, 1587. As to who may be sureties, see *Ibid.*

(*s*) See Dan. Pr. 1588. For order in like case, see Seton, ed. 4, p. 412, No. 8. This summons is required, after security has been given by a receiver approved under an order directing a proper person to be appointed: Dan. Pr. 1588.

(*t*) According to the scale of costs in Regul. 8 Aug. 1857, Sched. No. 15, it seems that it is the business of the receiver's solicitor to conduct the proceedings relating to his appointment, from the stage at which the receiver is approved to the completion of the appointment, including the recognizance, and the summons to appoint. As to the persons by whom applications arising out of the receivership should be made, see Dan. Pr. 1598, 1599.

[*or as may be*] account as such receiver. And that the said L. M. may, within fourteen days after the date of the Chief Clerk's certificate of the allowance of such account,

Or, on the —— next, and the same day in every succeeding year,

pay the balance that shall be thereby certified to be due from him on such account, or such part thereof as shall be certified to be proper to be so paid: as directed by the said judgment [*Or*, order] of the ——, 187—.

1669.
Summons to settle security to be given by a receiver pursuant to an order (*u*).

Formal parts: see ante No. 881.

on the part of L. M. (*x*), in the judgment [*Or*, order] dated the ——, 187 , named, to proceed under the said judgment [*Or*, order]; and to settle the security to be given by him as receiver, pursuant thereto.

1670.
Certificate of the security having been given (*y*).

[*Title, and reference to the record.*]

In pursuance of the directions given to me by the Master of the Rolls [*Or*, Vice-Chancellor ——], I hereby certify that, in pursuance of the judgment [*Or*, order] in this action, dated the —— day of ——, 187—, L. M., of [*residence and addition*]: the person who, upon first giving security, is by the said judgment [*Or*, order] appointed receiver of the rents and profits of the real estates, and to collect and get in the outstanding personal estate of A. B., in the said judgment [*Or*, order] named [*or as may be*]: has given security pursuant to the General Order of this Court; and has entered into a recognizance, together with C. D. and E. F., as his sureties, dated the —— day of ——, 187—, which has been approved of by the said Judge; in testimony whereof I have signed an allowance in the margin thereof; and such recognizance has been duly enrolled:

And I also certify, that the said Judge has appointed the —— day of ——, next, and the same day in each succeeding year [*or as may be*], to be the day on which the said L. M. is annually

(*u*) As to the course to be pursued where a receiver is appointed by the order subject to his giving security, see Dan. Pr. 1588, 1589; and Nos. 1669 and 1670; as to the effect of such an order, see *Edwards* v. *Edwards*, 2 Ch. D. 291. For forms of affidavit of value of property, of recognisance, and of affidavit of sureties as to their solvency, see *ante* Nos. 1663, 1665, 1666, 1667. As to the course to be pursued where the order directs a proper person to be appointed receiver, see note (*i*) to No. 1660 *ante*. As to the course to be pursued where the application is made by summons at Chambers, see note (*z*) to No. 1671 *post*.

(*x*) See *ante*, note (*t*) to No. 1668.

(*y*) See Dan. Pr. 1589.

[*or as may be*] to cause his account to be delivered into the Chambers of the said Judge. And fourteen days after the date of the Chief Clerk's certificate allowing each account, is appointed as the time during which the said L. M. is to pay the balances appearing due on the accounts so to be delivered in, or such part thereof as shall be certified to be proper to be paid: as directed by the said judgment [*Or*, order] of the —— day of ——, 187—.

Dated [*&c.: see ante* No. 1238].

1671.

Recognisance by a receiver and his sureties, before an order appointing a receiver has been made, where the application for a receiver is made at Chambers (*z*).

[*Proceed as in* No. 1117 *ante, to the first* whereas, *and continue thus:*]

Whereas his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——] on an application lately made to him at Chambers in an action now pending in the High Court of Justice, wherein G. H. is plaintiff and I. K. is defendant,

Or, wherein G. H., and another [*Or*, others] are plaintiffs, and I. K. and another [*Or*, others] are defendants,

Or, in a certain matter now pending in the High Court of Justice, intituled, In the matter of ——,

hath approved of the above bounden L. M., subject to his giving security, as a proper person to be appointed to receive [*State what: as thus:*] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., the testator in the writ of summons in this action [*or as may be*] named; and hath approved of the above-bounden C. D. and E. F. as sureties for the said L. M.; and hath also approved of the above written recognizance, with the underwritten condition, as a proper security to be entered into by the said L. M., C. D. and E. F., pursuant to the General Orders [*Conclude as in* No. 1665 *ante, to the end*].

(*z*) This form and the following should be made use of where the application for the appointment of a receiver is made by summons at Chambers. As to the course to be pursued in such a case, see Dan. Pr. 1589. For forms of affidavit of value of property, of fitness of receiver, and of solvency of sureties, see *ante* Nos. 1663, 1664, 1667. As to the course to be pursued where an order is made directing a proper person to be appointed, see note (*i*) to No. 1660 *ante*; and where an order is made appointing a receiver subject to his giving security, see note (*u*) to No. 1669 *ante*.

1672.
Minute of order appointing receiver, after such recognisance has been enrolled (*a*).

Formal parts and note of the evidence.

L. M., of [*residence and addition*], having been approved by the Judge as a proper person to be appointed to receive [*State what: see ante* No. 1659] ; and having given security pursuant to the 24th of the Consolidated General Orders, rule one, by entering into a recognizance, together with C. D. and E. F. as his sureties, dated the ——, 187—, which has been approved by the Judge, and duly enrolled : the Judge appoints the said L. M. receiver of the [*State what: see ante* No. 1659 ; *and*

If of real or leasehold estates, add direction to attorn: as in No. 1659 *ante:*

If of outstanding personal estate, add direction as to securities, &c.: as in No. 1659 *ante:*]

And orders that the said L. M. do on the ——, 187—, and the same day in every [*Continue as in* No. 1668 *ante, to* so paid ; *and conclude thus:*] into Court to the credit of this action [*Or*, matter] ; and that such balances be laid out in consolidated £3 per cent. annuities, and accumulated [*or as may be*].

1673.
Summons for receiver to give a new security, on death or bankruptcy of a surety (*b*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this action, may be ordered to give a new security duly to account for what he shall receive as such receiver: C. D., one of his sureties hereinafter named, having died [*Or*, having been adjudged bankrupt ; *or as may be*] ; and that such security may be approved by the Judge. And that the said L. M. may be ordered to pass his accounts up to the date of such new security ; and pay the balance certified to be due from him thereon into Court, to the credit of this action [*or as may be*]. And that, upon such new security being given, and payment in manner aforesaid of the said balance, the recognizance dated the ——, 187—, entered into by the said L. M., together with the said C. D. and E. F. as his sureties, may be vacated.

(*a*) See Dan. Pr. 1539 ; Seton, ed. 4, 413, No. 9.

(*b*) See Dan. Pr. 1535 ; for forms of order, see Seton, ed. 4, p. 444, Nos. 4, 5.

Section II.—Management by Receiver (*d*).

1674.
Notice of motion or summons for an examination *pro interesse suo* (*e*).

Formal parts: see ante No. 1571, *or* No. 881.

on the part of G. H. of [*residence and addition*], that an inquiry may be made whether the said G. H. has any and what interest in the real estate [*or as may be*], taken possession of by L. M. as the receiver appointed in this action, or in any and what part thereof.

1675.
Notice to tenant to attorn to receiver (*f*).

In the High Court of Justice,
Chancery Division.
[*Title and reference to the record.*]

I, L. M., of [*residence and addition*], the receiver appointed in this action of the rents and profits of the real estate of A. B., the testator in the writ of summons in this action named [*or as may be*], hereby give you notice and require you to attorn and become tenant to me for [*Describe the property; as thus:*] the messuage or tenement, garden and outbuildings, with the appurtenances, situate at A., in the county of B., now occupied by you, and for such other part or parts of the said real estate as is or are in your occupation; and to pay to me your rent in arrear, and growing rent, for the said premises. Dated this —— day of ——, 187—.

L. M.

To W. P., of [*residence and addition*].

1676.
Attornment thereon (*f*).

In the High Court of Justice,
Chancery Division.
[*Title, and reference to the record.*]

I, W. P., of [*residence and addition*], attorn and become tenant to L. M., the receiver appointed in this action, for [*Describe the property: see ante* No. 1675], as the same are now in my occupation: to hold the same at and under the same rent, and subject to the same covenants and conditions, as I now hold the same. And I have this day paid to the said L. M. the sum of (one shilling) for and on account, and in part payment of, the said rent. Dated this —— day of ——, 187—.

W. P.

Witness:
V. N., of [*residence and addition*].

(*d*) See Dan. Pr. 1590—1593, 1596—1600; Seton, ed. 4, pp. 436—443.

(*e*) See Dan. Pr. 1593. As to disturbing the possession of a receiver, see *Ibid.*, 1592, 1593.

(*f*) See Dan. Pr. 1590, 1591.

1677.

Formal parts: see ante No. 1571.

on the part of the plaintiff [*or as may be*], that W. P., of [*residence and addition*], may be ordered, within seven days after service, to attorn and become tenant to L. M., the receiver appointed in this action, for or in respect of the [*Describe the property: see ante* No. 1675], now occupied by the said W. P.; and to pay his rent in arrear, and growing rent for the same, to the said L. M.

Notice of motion for tenant to attorn, and pay rent (*g*).

1678.

[*Proceed as in* No. 1677 *ante, to* occupied by the said W. P.; *and continue thus:*]

And that an annual value, by way of rent, may be set upon the said premises during the time the said W. P. has been in the possession or occupation thereof; and that the said W. P. may be charged therewith.

Notice of motion for tenant to attorn, and for occupation rent to be set (*h*).

1679.

Formal parts: see ante No. 693.

1. [*Prove service of order directing the appointment of a receiver and directing tenants to attorn to him; see ante* No. 1266.]
2. [*Prove service of further order or Chief Clerk's certificate (if any) completing the appointment: see ante* No. 1266.]
3. [*Prove service of notice to attorn; see ante* No. 1573.]
4. [*Prove refusal to return; see ante* No. 1267.]
5. [*Show means of knowledge.*]

Affidavit in support of motion to attorn (*i*).

(*g*) See Dan. Pr. 1590, 1591; for forms of orders, see Seton, ed. 4, 436; No. 1; *Ibid.*, 437, Nos. 2, 5. As to the mode of enforcing the order, see R. S. C. Ord. XLII. 5; *ante*, note (*a*) at p. 687.

(*h*) See Dan. Pr. 1591. For order in like case, see *Venables* v. *Farmer*, M. R., 14 Mar. 1867, Reg. Lib. B. 649. As to the mode of enforcing the order, see R. S. C. Ord. XLII. 5; *ante*, note (*a*) at p. 687. As to fixing an occupation rent, where the tenant in possession has not agreed to pay any specific rent, see Dan. Pr. 1591.

(*i*) See Dan. Pr. 1591.

1680.

Notice of motion or summons to pay arrears of rent to receiver (*m*).

Formal parts : see ante No. 1571 *or* 881.

on the part of the plaintiff [*or as may be*], that W. D., of [*residence and addition*], may be ordered, within seven days after service, to pay to L. M., the receiver appointed in this action, the sum of £——, due from the said W. D. for arrears of rent of the [*Describe the property : see ante* No. 1675], in respect of his occupation thereof from the —— 18—, to the —— 18—.

1681.

Summons for leave for receiver to distrain (*p*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this action, may be at liberty to distrain upon the goods and chattels of E. F., of [*residence and addition*], for the sum of £——, being arrears of rent due from him on the ——, 187—, in respect of the [*Describe the property : see ante* No. 1675.]

[*If so :*] and that the said distress may be made in the name of the defendant C. D. ; and that he may be indemnified in respect thereof out of the estate of the testator A. B. [*or as may be*].

1682.

Summons for leave for receiver to bring an action for arrears of rent (*q*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this action, may be at liberty to commence and prosecute an action in the —— Division of Her Majesty's High Court of Justice [*Or*, in the County Court of —— holden at ——] in the name of the defendant W. J., as executor of the will of G. S., the testator in this action, against A. B., to obtain payment of £——, due for rent from the said A. B. to the said testator's estate ; and that the defendant W. J. may be indemnified therein out of the said estate.

(*m*) See Dan. Pr. 1591—1596. For orders in like case, on motion, see *Hobson* v. *Shearwood*, M. R., 1 Dec. 1854, Reg. Lib. A. 192 ; 19 Beav. 575 ; *Venables* v. *Farmer*, M. R., 14 Mar. 1867, Reg. Lib. B. 650 ; and on summons, see *O'Brien* v. *Davis*, V.-C. M. at Chambers, 23 July, 1870, Reg. Lib. B. 2369.

(*p*) Dan. Pr. 1596. For form of order to distrain in a defendant's name, see Seton, ed. 4, 437, No. 4.

(*q*) See *Bellis* v. *Jones*, V.-C. S. at Chambers, 18 Jan. 1864, Reg. Lib. A. 71 ; and see Dan. Pr. 1598 ; Seton, ed. 4, 437, No. 5.

1683. Notice of motion for payment to receiver of moneys received by defendant (*r*).

Formal parts: see ante No. 1571.

on the part of the plaintiff, that the defendant E. A. may be ordered, on or before the ——, 187—, or subsequently within four days after service, to pay to L. M., the receiver appointed in this action, all moneys received by the said defendant since the appointment of such receiver: the amount to be verified by affidavit.

1684. Summons for leave for receiver to cut and sell timber (*s*).

Formal parts: see ante No. 881.

on the part of the plaintiff, that L. M., the receiver appointed in this action, may be at liberty to cut and fell the trees specified in the affidavit of C. D., filed the ——, 187—, and the exhibit marked A. thereto; and to sell the same by public auction, according to the usual particulars and conditions of sale in like case; and that the said receiver may receive the purchase moneys for the said trees, and bring the amount thereof into his account as such receiver.

1685. Other summonses relating to the management of property comprised in a receivership (*t*).

[*See the following forms, ante: which can be readily adapted to receivership*]:—

Action: For leave to bring; No. 1058; or defend; No. 1059; or compromise; No. 1063.
Business: For leave to carry on; No. 1061.
Claim: For leave to compromise; No. 1063.
Debts: For leave to pay; No. 1062.
Enfranchisement: To approve agreements for; No. 1067.
Lease: For leave to obtain renewal of; No. 1069.
To approve agreement to grant; No. 1070 (*u*).
Outstanding estate: For leave to convert; No. 1060.
Repairs, or Drainage works: For leave to execute; No. 1064 (*x*).

(*r*) *Lockwood* v. *Ellam*, V.-C. S., 20 Dec. 1866, Reg. Lib. A. 2640; and see Dan. Pr. 1596.

(*s*) *Earl of Harrington* v. *Countess of Harrington*, V.-C. S. at Chambers, 4 Mar. 1864, Reg. Lib. A. 469; and see Dan. Pr. 1600; and Seton, ed. 4, 439, Nos. 10, 11; and *ante* No. 1185.

(*t*) See Dan. Pr. 1599, 1600; and notes to the forms above referred to.

(*u*) As to the power of a receiver to create tenancies, and grant leases, see Dan. Pr. 1597.

(*x*) As to repairs by receivers, see Dan. Pr. 1598.

Section III.—Receivers' Accounts (*z*).

1686.
Affidavit by receiver, verifying his account (*a*).

In the High Court of Justice,
Chancery Division.
[*Title, and reference to the record.*]

I, L. M., of [*residence and addition*], the receiver appointed in this action, make oath and say, as follows:

1. The account contained from page —— to page ——, both inclusive, in each of the two several books marked with the several letters A. and B., produced and shown to me at the time of swearing this my affidavit (*b*), and purporting to be my account of the rents and profits of the real estate, and of the outstanding personal estate, of A. B., the testator [*Or*, intestate] in this action (*c*), from the —— day of ——, 187—, to the —— day of ——, 187—, both inclusive, doth contain a true account of all and every sum and sums of money received by me, or by any other person or persons by my order, or to my knowledge or belief, for my use, on account or in respect of the said rents and profits (*c*), accrued due on or before the —— day of ——, 187— (*d*), or on account or in respect of the said personal estate (*c*): other than and except what is included as received in my former account [*Or*, accounts] sworn to by me.

2. The several sums of money mentioned in the said account hereby verified to have been paid and allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. A. B. and C. D.: who are sureties for me as such receiver: are respectively living; and are respectively resident in Great Britain; that is to say: the said A. B. at [*State where*], and the said C. D. at [*State where*]; and they have not, nor has either of them, been adjudged bankrupt, nor have any proceedings been taken for the liquidation by arrangement of the affairs of them, or of

(*z*) See Dan. Pr. 1600—1612; Cons. Ord. XXIV. 2; Regul. 8 Aug. 1857, rule 16; Seton, ed. 4, 443—447. The account may be ordered to be taken in the office of or by a district registrar; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66. As to the fees payable on taking a receiver's account, see *post*, note (*i*) to No. 1689.

(*a*) See Dan. Pr. 1600, 1601; Regul. 8 Aug. 1857, rule 24, and Sched. No. 17. The affidavit is not made till after the account has been gone through and allowed at the Judge's Chambers.

(*b*) The affidavit must refer to the account as an exhibit, and not be annexed to it; Cons. Ord. XXIV. 3; Dan. Pr. 1601. For form of memorandum of exhibit, see *ante* No. 723.

(*c*) In describing the account, the language of the judgment or order appointing the receiver should be followed.

(*d*) The day to which the account is made up.

either of them, or for the payment of a composition upon the debts and liabilities owing by them, or either of them (*dd*).

Sworn (*&c.: see ante* No. 696.)

1687.
Account of receiver (*e*).

In the High Court of Justice,
Chancery Division.

[*Title and reference to the record.*]

The first [*or as may be*] account of L. M., the receiver appointed in this action by [*Or*, pursuant to] an order made in this action, dated the —— day of —— 187—, to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of A. B., the testator [*Or*, intestate] in this action named (*f*): from the —— day of ——, 187—, to the —— day of——, 187—.

REAL ESTATE.—RECEIPTS.

No. of item.	Date when received.	Tenants' names.	Description of premises.	Annual rent.	Arrears due at ——, 187—.	Amount due at ——, 187—.	Amount received.	Arrears remaining due.	Observations.
				£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	(*g*).
1		John Jones .	Home Farm, in the Parish of Norton, in the County of Oxford.						
2		Thomas Jones .	House at Norton aforesaid.						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of item.	Date of payment or allowance.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount.
				£ s. d.
1		Sun Fire Office .	One year's insurance of —, due — . . .	
2		Thomas Carpenter	Bill for repairs at house let to Thomas Jones	
3		James Francis .	Allowance for a half year's income tax, due —. . . .	
			Total payments £	

(*dd*) This clause, or a clause to the like effect, is required, at the Master of the Rolls' Chambers, to be inserted in every affidavit by a receiver verifying his account.

(*e*) See Dan. Pr. 1600; Regul. 8 Aug. 1857, rule 24, and Sched. No. 14. As to the receiver's salary and allowances, see Dan. Pr. 1594—1596. As to charging the receiver with interest, and disallowing his salary, on default, see Dan. Pr. 1603; Cons. Ord. XXIV. 2; Regul. 8 Aug. 1857, rule 16. As to furnishing copies of the account, see Dan. Pr. 1600. As to the mode of substantiating and completing the account, and as to the parties entitled to costs, see Dan. Pr. 1601. As to the fees payable on taking the account, see *post*, note (*i*) to No. 1689.

(*f*) The description of the account should accord with the order appointing the receiver.

(*g*) In the first account, it should be stated in this column how each tenant

Receipts on Account of Personal Estate.					Payments and Allowances on Account of Personal Estate.				
No. of item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.	No. of item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
				£ s. d.					£ s. d.

Summary.

	£ s. d.	£ s. d.
Amount of balance due from receiver on account of real estate on last account		
Amount of receipts on the above account of real estate		
Balance of last account paid into Court		
Amount of payments and allowances on the above account of real estate		
Amount of receiver's costs of passing this account as to real estate		
Balance due from the receiver on account of real estate		£

	£ s. d.	£ s. d.
Amount of balance due from receiver on last account of personal estate		
Amount of receipts on the above account of personal estate		
Balance of last account paid into Court		
Amount of payments and allowances on the above account of personal estate		
Amount of receiver's costs of passing this account as to personal estate		
Balance due from the receiver on account of personal estate		£

1688. Summons to proceed on account (*h*).

Formal parts: see ante No. 881.

on the part of L. M. the receiver appointed in this action, to proceed on his first [*or as may be*] account.

1689. Chief Clerk's certificate of allowance of account (*i*).

[*Title, and reference to the record.*]

In pursuance of the directions given to me by the Master of the Rolls [*Or*, Vice-chancellor ——], I hereby certify that in

holds; and every alteration should be noticed in the subsequent accounts. In this column should also be entered any remarks the receiver may think proper to make as to the arrears of rent, the state of repairs, or otherwise; Bloxam, 51; Dan. Pr. 1600.

(*h*) See Dan. Pr. 1600. The summons should be served on such parties as are entitled to attend the passing of the account; *Ibid.* On leaving the first account, a copy of the order appointing the receiver, certified by the solicitor to be a true copy thereof, must be left at Chambers, if not previously done; *Ibid.*, note (*p*). For form of such certificate, see *ante* No. 967.

(*i*) See Dan. Pr. 1600, 1601. On taking an account of a receiver or

pursuance of the judgment [*Or*, order] made in this action, dated the —— day of ——, 187—, and the order [*Or*, Chief Clerk's certificate], dated the —— day of ——, 187—, L. M., the person appointed to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of C. D., the testator [*Or*, intestate] in this action named [*or as may be*], has left in the chambers of the said Judge his first [*or as may be*] account as such receiver of his receipts and payments and allowances in respect of the said rents and profits, and outstanding personal estate [*or as may be*], from the time of his appointment [*Or*, from the —— day of ——, 187—, to the —— day of ——, 187—]; and such account has been passed and duly entered pursuant to the 24th of the Consolidated Orders of this Court; and is verified by the affidavit of the said receiver filed the —— day of ——, 187—.

The said receipts amount altogether to the sum of £——; and the said payments and allowances to the sum of £——; and there is due from the said receiver, as the balance of such account, the sum of £——: which sum of £——, in pursuance of the direction contained in the said judgment [*Or*, order] of the —— day of ——, 187—, is to be paid by the said L. M. into Court to the credit of this action, to the account entitled "the real estate account" [*or as may be*], on or before the —— day of ——, 187—.

Dated [*&c.: see ante* No. 1238].

1690. Memorandum of allowance of account (*k*).

Master of the Rolls [*Or*, Vice-Chancellor ——] at Chambers. } ——, 187—.

This account [*Or*, This duplicate account] has been allowed: as appears by my certificate dated the —— day of ——, 187—.

R. M., Chief Clerk.

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manager, a fee is payable, where the amount found to have been received, without deducting any payment, does not exceed £200, of 2*s.*; and where such amount does exceed £200, for every £50, or fraction of £50, a fee of 6*d.*; Ord. as to Court Fees, Oct. 1875; Wilson, 506. The fees are upon payment to be allowed in the account, unless the Court or Judge otherwise directs; *Ibid.* The fees are to be paid by means of a stamp impressed upon or adhesive to the certificate; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522. As to the time for and mode of applying to take the opinion of the Judge on, or to vary the certificate, see Dan. Pr. 1219, 1223, 1601; Cons. Ord. XXXV. 54; *ante* Nos. 1241—1247.

(*k*) See Dan. Pr. 1601. The memorandum is written at the foot of the sworn account. As to depositing the receiver's book at the Record and Writ Clerk's office, on the completion of the receivership, see Dan. Pr. 1601; Cons. Ord. XXIV. 4.

1691. Summons by receiver, for further time to leave his account (*l*).

Formal parts: see ante No. 881.

on the part of L. M., the receiver appointed in this action, that he may have —— days further time to leave in my Chambers his (first) account as such receiver, pursuant to the order dated the —— day of ——, 187—.

1692. Summons for a short, or four day order, to compel receiver to leave account (*m*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this action, may be ordered, within (four) days after service, to leave in my Chambers his (first) account as such receiver, pursuant to the order dated the —— day of ——, 187— ; and that the said L. M. may be ordered to pay the costs of this application.

1693. Summons by receiver, for leave to pay money into Court on account (*n*).

Formal parts: see ante No. 881.

on the part of L. M., the receiver appointed in this action, that he may be at liberty to pay into Court, to the credit of this action [*or as may be*], the sum of £——, part of the rents and profits, and £——, part of the outstanding personal estate, respectively received and got in by him as such receiver ; and that his costs of this application may be retained by him, and allowed in his accounts.

1694. The like, to pay in his balance (*o*).

Formal parts ; see ante No. 881.

on the part of L. M., the receiver appointed in this action, that he may be at liberty to pay into Court, to the credit of this action [*or as may be*], the sum of £——, by the Chief Clerk's certificate dated the ——, 187—, certified to be due from him on passing his (first) account as such receiver, as therein mentioned. And that the applicant's costs of this application may be retained by him, and allowed in his next account [*or as may be*].

(*l*) See Dan. Pr. 1600 ; Cons. Ord. XXIV. 2 ; *Ibid.*, XXXV. 23; *Ibid.*, XXXVII. 17, 18.

(*m*) See Dan Pr. 1602. For order in like case, see *Whipham* v. *Whipham*, V.-C. J. at Chambers, 14 April, 1870, Reg. Lib. B. 1133 ; and see Seton, ed. 4, p. 443, No. 1. For the mode of enforcing the order, see R. S. C. Ord. XLII. 5 ; R. S. C. Ord. XLVII. ; and *ante*, note (*a*) at p. 687.

(*n*) See Dan. Pr. 1602. For the mode of paying money into Court, see *post*, note (*o*) to No. 1974.

(*o*) As to when this application may be necessary, see Dan. Pr. 1602.

1695. Summons to compel receiver to pay balance into Court (*p*).

Formal parts ; see ante No. 881.
on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this action, may be ordered, on or before the —— day of ——, 187—, or subsequently, within four days after service, to pay into Court, to the credit of this action [*or as may be*], the sum of £——, by the Chief Clerk's certificate dated the ——, 187—, certified to be due from him on passing his (first) account therein mentioned ; and that the said L. M. may be ordered to pay the costs of this application.

1696. Summons by surety, for leave to attend the passing of receiver's account (*t*).

Formal parts : see ante No. 881.
on the part of C. D., one of the sureties in this action for L. M., the receiver appointed therein, that the said C. D. may be at liberty to attend, at his own expense, the passing of the accounts of the said L. M. as such receiver [*or as may be*].

1697. Summons for leave for representative of deceased receiver to pass his final account (*u*).

Formal parts ; see ante No. 881.
on the part of E. F., the executor of the will [*Or*, administrator of the effects] of L. M., late the receiver in this action, that he

Or, on the part of the plaintiff, *&c.*, that E. F., the executor, [*&c. ; as above*],

may be at liberty to carry in and pass the accounts of the said L. M., as such receiver, from the foot of his last certified account, to the time of his decease ; and to pay the balance which may be certified to be due from his estate into Court, to the credit of this action [*or as may be*]. And that thereupon the recognizance dated the ——, 187—, entered into by the said L. M., together with C. D. and E. F. as his sureties, may be vacated ; and that the costs of the said E. F. of this application, and consequent thereon, as between solicitor and client, may be retained by him, and be allowed on passing the said accounts.

(*p*) See Dan. Pr. 1602 ; Cons. Ord. XXIV. 2 ; *Ibid.*, XXXV. 23. As to the mode of enforcing the order, see R. S. C. Ord. XLII. 2 ; and *ante*, note (*a*), at p. 687.

(*t*) See Dan. Pr. 1616.

(*u*) See Dan. Pr. 1605. For orders in like case, see *Chandler* v. *Brittan*, V.-C. S. at Chambers, 17 Dec. 1866, Reg. Lib. A. 2770 ; *O'Toole* v. *Brown*, M. R. at Chambers, 7 Feb. 1870, Reg. Lib. B. 297.

1698.

Summons for leave to put recognizance in suit (*x*).

Formal parts; see ante No. 881.

on the part of the plaintiff [*or as may be*], that he may be at liberty

Or, that the defendant C. D., the executor of the will of A. B., the testator in this action [*or as may be*] may be ordered

to put in suit the recognizance, dated the —— day of ——, 187—, entered into by L. M., the (late) receiver in this action, together with C. D. and E. F., his sureties.

1699.

Notice of motion or summons by surety, to stay action on the recognizance (*q*).

Formal parts; see ante No. 1571 *or* No. 881.

on the part of A. B., in the order dated the —— day of ——, 187— [*Order to put recognizance in suit*], named, that [*State terms proposed; as thus;*]

on payment by him into Court, to the credit of this action, on or before the —— day of ——, 187—, of the sum of £——, and on payment also by him of the costs of obtaining the said order, and of this application, and of the action now pending against the said A. B., upon the recognizance in the said order mentioned,

all further proceedings against the said A. B., upon the recognizance in the said order mentioned, may be directed to be stayed.

Section IV.—Discharge of Receiver (*r*).

1700.

Petition to discharge receiver, and vacate recognizance (*s*).

Formal parts; see ante No. 1578.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. [*Recite judgment or order appointing receiver, subject to his giving security, and the Chief Clerk's certificate of such security having been given—Or the judgment or order directing a proper person to be appointed receiver, and the subsequent order appointing such person.*]

2. [*State to what time the receiver has passed his accounts, and accounted for his balances; as thus:*] Pursuant to the said judgment *&c.*, the said L. M. has passed his accounts as such receiver to the —— day of ——, 187—; and has paid, in the manner

(*x*) See Dan. Pr. 1605. For order in like case, see Seton, ed. 4, p. 444, No. 3.

(*q*) See Dan. Pr. 1612, 1616.

(*r*) *Ibid.*, 1613, 1614.

(*s*) *Ibid.*, 1614.

thereby directed, the balances from time to time certified to be due from him on his said accounts.

3. [*State why a receiver has ceased to be necessary; as thus;*] By an order dated the —— day of ——, 187—, C. D. and E. F. have been appointed trustees of the real estate of the testator G. H., and such estate has been conveyed to and vested in them, upon the trusts of his will. By reason thereof, it is expedient that the appointment of a receiver of the said estate should be discontinued.

Your petitioner therefore humbly prays, that the said L. M. may be discharged from being receiver as aforesaid; and that he may be ordered to pass his final account as such receiver, and pay the balance certified to be due from him thereon into Court, to the credit of this action [*or as may be*]; and that thereupon the recognizance, dated the ——, 187—, entered into by the said L. M., together with C. D. and E. F. as his sureties, may be vacated.

[*Add, if desired, a clause as to the costs; as thus;*] And that the costs of all proper parties of this application, and consequent thereon, may be taxed as between solicitor and client; and that the said L. M. may be directed to pay such costs; and be allowed the same on passing his said account.

Or that [*Continue as in* No. 1578 *ante, to the end; and add foot note,* No. 1579].

1701. Notice of motion or summons to discharge receiver (*t*).

Formal parts: see ante No. 1571, *or* 881.
on the part of the plaintiff [*or as may be*], that L. M., the receiver appointed in this action, may be discharged; and that he may be ordered [*Continue as in prayer of* No. 1700 *ante, to* said account].

1702. Summons to vacate receiver's recognizance (*u*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*or as may be*], that the recognizance dated the —— day of ——, 187—, entered into by L. M., the receiver in this action, together with C. D. and E. F. as his sureties, may be vacated.

(*t*) See Dan. Pr. 1614. For orders in like case on summons, see *Bromley* v. *Beal*, M. R. at Chambers, 28 Jan. 1864, Reg. Lib. A. 385 (by consent); *Pugh* v. *Beal*, V.-C. M. at Chambers, 19 Nov. 1870, Reg. Lib. B. 2734.

(*u*) See Dan. Pr. 1614. For order in like case, see *Godfrey* v. *Whitehead*, V.-C. S. at Chambers, 10 April, 1865, Reg. Lib. A. 879. The order is not now made on petition of course: even by consent.

CHAPTER XXVI.

DISCOVERY.

Section I.—Discovery by Means of Interrogatories (*a*).

1703. Summons for leave to deliver interrogatories (*a*).

Formal parts; see ante No. 881.

on the part of the plaintiff [*Or*, defendant], that he may be at liberty on or before the —— day of ——, 187—, to deliver interrogatories in writing for the examination of the defendant A. B. [*or as may be*]. And that the costs of this application may be costs in the action.

(*a*) In some cases interrogatories may be delivered without an order; the plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, deliver interrogatories in writing for the examination of the defendant or defendants, or any one or more of the defendants; but he may not without an order deliver more than one set of interrogatories to the same defendant; R. S. C. Ord. XXXI. 1. Under this rule, in an ordinary Chancery action, the plaintiff may deliver interrogatories at the same time that he delivers his statement of claim; *Harbord* v. *Monk*, 9 Ch. D. 616; but in a common law action, interrogatories delivered before the statement of defence is put in will be set aside, unless there be some special reason for putting them at that stage; *Mercier* v. *Cotton*, 1 Q. B. D. 442; and see *Hancock* v. *Guerin*, 27 W. R. 112; for form of application to set aside interrogatories, see *post* No. 1706. A defendant may, at the time of delivering his defence, or at any subsequent time, not later than the close of the pleadings, without any order for that purpose, deliver interrogatories in writing for the examination of the plaintiff or plaintiffs, or any one or more of the plaintiffs; but he may not, without an order, deliver more than one set of interrogatories to the same plaintiff; R. S. C. Ord. XXXI. 1; this rule does not enable a defendant to interrogate before putting in a statement of defence, nor will the Court, in general, make an order allowing a defendant to interrogate before statement of defence put in; *Disney* v. *Longbourne*, 2 Ch. D. 704; but the defendant was permitted to interrogate before putting in his statement of defence in *Harbord* v. *Monk*, 9 Ch. D. 616. In any other case than those above mentioned, or where it is desired to interrogate an officer or member of a corporation or other body, the leave of the Court or a judge to deliver interrogatories must be obtained; R. S. C. Ord. XXXI. 1, 4; but, by such leave, either party may at any time deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties; R. S. C. Ord. XXXI. 1; leave will not be

1704. Summons for leave to deliver interrogatories to member or officer of corporation, &c. (*b*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*Or*, defendant], that he may be at liberty on or before the —— day of ——, 187—, to deliver interrogatories in writing for the examination of A. B., the secretary of the defendants, the —— Company, Limited [*or as may be*]. And that the costs of this application may be costs in the action.

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given to administer interrogatories after the close of the pleadings, unless the delay be satisfactorily explained; *Ellis* v. *Ambler*, 25 W. R. 557; but in *The London and Provincial Company* v. *Davies*, 5 Ch. D. 775, such leave was given on terms. It seems that, notwithstanding a reference to a Referee, the application for leave to deliver interrogatories should be made to the judge to whom the action was assigned, and not to the Referee; see *Rowcliffe* v. *Leigh*, 4 Ch. D. 661, a decision upon an application as to documents. The Court, in adjusting the costs of the action, will, at the instance of any party, inquire, or cause inquiry to be made, into the propriety of exhibiting interrogatories, and if it be the opinion of the Court or judge, or of the Taxing Master, that interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by such interrogatories and the answers thereto will be borne by the party in fault; R. S. C. Ord. XXXI. 2; and see R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 18.

(*b*) If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at Chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly; R. S. C. Ord. XXXI. 4. As to the member or officer who should be interrogated, see *McFadzen* v. *Corporation of Liverpool*, L. R. 3 Ex. 279; *Corporation of Hastings* v. *Ivall*, L. R. 8 Ch. 1017; *Brown* v. *Thames, &c., Co.*, 43 L. J. C. P. 112; *Republic of Liberia* v. *Roye*, 1 App. Cas. 139. Under the old practice, if, in an action against a corporation, the plaintiff wished to obtain discovery, it was necessary for him to make some officer or member of the corporation a party to the suit; Dan. Pr. 132, and note (*u*); and in an action by a corporation, if a defendant wished to obtain discovery, it was necessary for him to file a cross bill against the corporation and some officer or member of it; *Imperial Mercantile Credit Association* v. *Gibbon*, 12 Jur. N. S. 898; *Imperial Mercantile Credit Association* v. *Whitham*, L. R. 3 Eq. 89; but it is now improper to make a member or officer of the corporation a party for the purpose of discovery merely; and the name of a member or officer made a party for that purpose only will be ordered to be struck out; *Wilson* v. *Church*, 9 Ch. D. 552; for form of application to strike out, see *ante*, No. 1. The interrogatories for the examination of a member or officer of a corporation or other body cannot, even before the close of the pleadings, be delivered without the leave of the Court or a Judge; R. S. C. Ord. XXXI. 4. Upon the hearing of the summons the only question which will be gone into is the fitness of the member or officer named in the summons to give discovery; the interrogatories proposed to be delivered will not be looked at, nor their propriety considered; *Berkeley* v. *The Standard Discount Co.*, 9 Ch. D. 643.

1705.
Interrogatories (*c*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D., E. F., and G. H., Defendants.

Interrogatories on behalf of the above named plaintiff [*or as may be*], for the examination of the above named defendants E. F. and G. H. [*Or*, of A. B., the secretary of the defendants, the —— Company, Limited; *or as may be*].

[*Here set forth the interrogatories in numbered paragraphs, as thus:*]

1. Did not, *&c.*
2. Has not, *&c.*

NOTE.—The defendant E. F. is required to answer the interrogatories numbered ——.
The defendant G. H. is required to answer the interrogatories numbered ——.

1706.
Summons to set aside or strike out interrogatories (*d*).

Formal parts: see ante No. 881.

on the part of the plaintiff [*or as may be*], that the interrogatories [*Or*, that the interrogatories numbered —— of the interrogatories] delivered by the defendant [*or as may be*], in this action for the examination of the plaintiff [*or as may be*], may be set aside [*or*, may be struck out], on the ground that [*Here specify the ground*

(*c*) R. S. C. Ord. XXXI. 3, and (App.) D, form 7. At the foot of the interrogatories there must be a note, stating which of such interrogatories each of the persons interrogated is required to answer; R. S. C. Ord. XXXI. 1.

(*d*) An application to set aside interrogatories on the ground that they have been exhibited unreasonably or vexatiously, or to strike out any interrogatory or interrogatories on the ground that it or they is or are scandalous, may be made at Chambers within four days after service of the interrogatories; R. S. C. Ord. XXXI. 5 (R. S. C. Nov. 1878, r. 3). Interrogatories delivered after a demurrer to the whole of the statement of claim has been delivered, and whilst it is pending, will be set aside; for, as the demurrer admits all the facts properly pleaded by the plaintiff in his statement of claim, the plaintiff has no right to discovery; Dan. Pr. 466, 1689; Seton, ed. 4, 156; for the same reason, whilst a demurrer to part of a statement of claim is pending, no interrogatories will be allowed in respect of the matter demurred to; see *Watson* v. *Hawkins*, 24 W. R. 884; in a common law action, interrogatories delivered before the statement of defence is put in, will be set aside, unless some reason is shown for putting them at that stage; *Mercier* v. *Cotton*,

relied upon, as thus:] the said interrogatories have been exhibited vexatiously [*or*, are scandalous] (*e*). And that the said defendant [*or as may be*], may be ordered to pay to the plaintiff [*or as may be*], his costs occasioned by the delivery of the said interrogatories and of this application.

1707. Notice of motion or summons to have discovery postponed until after issue or question determined (*f*).

Formal parts: see ante No. 1571 *or* 881.
on the part of the defendant [*or as may be*], that

the following questions or issues of fact [*Or*, partly of fact and partly of law], may be tried before [*Here insert one of the modes in which a question arising in an action may be tried* (*g*)], that is to say, whether [*Here state concisely the questions or issues in dispute, upon the determination of which the right to the discovery sought, depends*] (*h*); *Or*,

issues may be framed for the purpose of trying whether [*Here state the questions or issues*], and that such issues may be tried before [*Here state mode of trial proposed*] (*h*); *Or*,

1 Q. B. D. 442; and see *Hancock* v. *Guerin*, 27 W. R. 112; but this rule does not apply to ordinary Chancery actions; *Harbord* v. *Monk*, 9 Ch. D. 616; where the interrogatories are unnecessary, as where the information sought after will be afforded by the defendants' preliminary act, they will be set aside; *The Biola*, 24 W. R. 524. The party applying to strike out interrogatories as scandalous must point out in his summons those to which he objects, and only those so particularised will form the subject of the discussion before the Judge, who will go through the interrogatories and decide upon them *seriatim*; *Allhusen* v. *Labouchere*, 3 Q. B. D. 654.

(*e*) As to the ground upon which the application may be made, see *supra*, note (*d*).

(*f*) If the party from whom discovery of any kind is sought, objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery sought depends on the determination of any issue or question in dispute in the action, or that, for any other reason, it is desirable that any issue or question in dispute in the action should be determined, before deciding upon the right to the discovery, order that such issue or question be determined first, and reserve the question as to the discovery; R. S. C. Ord. XXXI. 19; accordingly, where the discovery sought would be material only in the event of an issue being determined in a particular way, and had no bearing upon that issue, the discovery was reserved until after the issue had been determined; *Wood* v. *Anglo-Italian Bank*, 34 L. T. 255; *Rowcliffe* v. *Leigh*, 6 Ch. D. 256; and see *Turney* v. *Bayley*, 4 D. J. & S. 322; Dan. Pr. 1688, 1689.

(*g*) See R. S. C. Ord. XXXVI. 2; and *ante* No. 740.

(*h*) See *Wood* v. *Anglo-Italian Bank*, 34 L. T. 255; *Rowcliffe* v. *Leigh*, 6

a special case may be prepared for the purpose of obtaining the opinion of the Court, whether [*Here state the question in dispute*], and that such special case may be set down to be argued before the Court (*j*); *Or*,

the following question of law may be set down to be argued before the Court, viz., whether [*Here state the question in dispute*] (*j*).

And that the time for the defendant [*or as may be*], to answer the interrogatories delivered in this action by the plaintiff [*or as may be*], for the examination of the said defendant [*or as may be*], may be enlarged, until after the said questions or issues shall have been determined. And that the said defendant [*or as may be*], may then be at liberty to make such application with respect to the said interrogatories as he may be advised. And that the costs of this application may be costs in the action.

1708.

Summons for time to answer interrogatories (*k*).

Formal parts: see ante No. 881.

on the part of the defendant [*or as may be*], that he may have —— days further time to answer the interrogatories delivered by the plaintiff [*or as may be*], for the examination of the said defendant [*or as may be*]. And that the costs of this application may be costs in the action (*l*).

Ch. D. 256; as to the power of the Court or a Judge to order one or more issues of fact in an action to be tried before any other or others, see R. S. C. Ord. XXXVI. 6, and *ante* No. 790. For form of order, see Seton, ed. 4, 371, 1, 2.

(*j*) As to stating a question of law for the opinion of the Court before the decision of any question or issue of fact, see R. S. C. Ord. XXXIV. 2; and *ante* Nos. 794, 795, and note (*a*) at p. 438. For form of order, see Seton, ed. 4, 45, 7.

(*k*) The affidavit in answer to interrogatories must be filed within ten days after the delivery of the interrogatories, unless some other time is limited by the order giving leave to deliver interrogatories; R. S. C. Ord. XXXI. 6. In this period the time of the long vacation is reckoned; R. S. C. Ord. LVII. 5; but the time allowed may be enlarged by the Court or a Judge, and that notwithstanding the previous expiration of the time allowed; *Ibid.*, rule 6. As to the time for filing the affidavit where the party interrogated is resident out of the jurisdiction, see *The Emma*, 24 W. R. 587.

(*l*) See note (*d*) to No. 402 *ante*.

1709. The like where time has expired (*k*).

Formal parts ; see ante No. 881.

on the part of the defendant [*or as may be*], that, notwithstanding the time allowed has expired, he may be at liberty, on or before the —— day of ——, 187—, to file an affidavit in answer to the interrogatories delivered by the plaintiff [*or as may be*], for the examination of the defendant [*or as may be*]. And that the costs of this application may be costs in the action (*l*).

1710. Answer to interrogatories (*m*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . . Plaintiff,
and
C. D., E. F., and G. H. . Defendants.

The answer of the above named defendant, E. F. [*or as may be*], to the interrogatories for his examination, delivered by the above named plaintiff [*or as may be*].

(*k*) See note (*k*) to No. 1708 *ante*.

(*l*) See note (*d*) to No. 402 *ante*.

(*m*) Interrogatories must be answered by affidavit ; R. S. C. Ord. XXXI. 6 ; as to the time for filing the affidavit, see *Ibid.*, and note (*k*) to No. 1708 *ante;* for form of affidavit, see R. S. C. App. (B), No. 8. If the party interrogated omits to answer, the only course is to apply for an order requiring him to answer ; R. S. C. Ord. XXXI. 10 ; for form of application, see *post* No. 1711 ; an application to attach a party for not answering, or to dismiss his action, where he is a plaintiff, or to strike out his defence, where he is a defendant, cannot be made until after an order has been obtained, requiring him to answer, and he has failed to comply with such order ; R. S. C. Ord. XXXI. 20. An affidavit in answer to interrogatories, which exceeds ten folios in length, must, unless otherwise ordered by a Judge, be printed ; R. S. C. Ord. XXXI. 7 ; R. S. C. June, 1876, rule 11 ; a schedule to the affidavit must be printed also ; *Webb* v. *Bornford*, 25 W. R. 251, in which case the Judge allowed a written affidavit to be filed. Applying the decision in *Manby* v. *Bewicke*, 8 D. M. & G. 470, to R. S. C. Ord. XXXVII. 2, and Ord. XXXVIII. 4, and comparing with the language of these rules, that of 15 & 16 Vict. c. 86, s. 40, it would seem, that a party cannot be cross-examined upon an affidavit made by him in answer to interrogatories ; unless, indeed, any party gives notice to use such affidavit upon the trial, or upon any other proceeding in the action, against any other party, in which case the party against whom it is used may cross-examine upon it ; see Dan. Pr. 726, 727, and notes (*b*) and (*c*). Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories, without putting in the other answers ; but, in such a case, the Judge may look at the whole of the answers, and, if he be of opinion that any others of them are so connected with those put in, that the last mentioned answers ought not to be used without them, he may direct them to be put in ; R. S. C. Ord. XXXI. 23.

In answer to the said interrogatories, I, the above named defendant, E. F., make oath and say as follows :—

1. }
2. } [*Here set forth the answers to the interrogatories in paragraphs numbered consecutively.*]
3. }

4. I object to answer the interrogatories numbered —— on the ground that [*Here state the grounds on which the deponent objects to answer, verifying such grounds* (*n*)].

(*n*) Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the action, or that the matters inquired into are not sufficiently material at that stage of the action, or on any other ground, may be taken in the affidavit in answer ; R. S. C. Ord. XXXI. 5 (R. S. C. November, 1878, r. 3). Under the new practice the right of a party to discovery is, in all divisions of the High Court of Justice, regulated by the rules previously obtaining in the Court of Chancery ; *Anderson* v. *Bank of British Columbia*, 2 Ch. D. 644, 654, 658 ; *Bustros* v. *White*, 1 Q. B. D. 423 ; *Atherley* v. *Harvey*, 2 Q. B. D. 524 ; 36 & 37 Vict. c. 66 (Sup. Cot. Jud. Act, 1873), s. 25, subs. 11. Under those rules, a party might, and consequently he now may, exact from the opposite party, a discovery upon oath as to all matters of fact (but not conclusions of law or inference from fact), which are well pleaded, which are material, and which the opposite party has not by his pleading admitted ; see Wigram on Discovery, pp. 46, *seq.*; and also as to all matters of fact upon which his opponent relies, but not the evidence by which it is proposed to prove such matters of fact ; *Eade* v. *Jacobs*, 3 Ex. D. 335 ; *Saunders* v. *Jones*, 7 Ch. D. 435 ; but under those rules a party might, and consequently he now may, resist discovery of : (1.) Matter which tends to incriminate him, or to expose him to criminal proceedings, or to any penalty or forfeiture ; *Atherley* v. *Harvey*, 2 Q. B. D. 524 ; *Fisher* v. *Owen*, 8 Ch. D. 645 ; *Allhusen* v. *Labouchere*, 3 Q. B. D. 654 ; Dan. Pr. 481 to 487 ; Seton, ed. 4, 160, 161 ; (2.) Irrelevant matter ; *Mansfield* v. *Childerhouse*, 4 Ch. D. 82 ; Dan. Pr. 487, 488 ; Seton, 161, 162 ; a party is not entitled to administer interrogatories to his opponent merely for the purpose of discrediting him ; the interrogatories must be confined to facts relevant to the matters in litigation ; *Allhusen* v. *Labouchere*, 3 Q. B. D. 654. The relevancy of the matter inquired after sometimes depends upon the stage at which the discovery is sought ; thus matter, which, before judgment, is irrelevant, as not relating to any question or issue to be determined at the trial, may, after judgment, become relevant, as being necessary or useful for the purpose of carrying the judgment into effect. In such cases, the rule of the Court of Chancery seems to have been that, where the plaintiff's interest and title to relief were admitted, he was entitled to full discovery of everything relating to the matters in question, though not relevant to any particular question to be decided at the trial ; *Elmer* v. *Creasy*, L. R. 9 Ch. 69 ; per Turner, L. J., in *Turney* v. *Bayley*, 4 D. J. S. 332, at p. 340 ; but where the plaintiff's interest and title were disputed, he was only entitled to discovery of matter material to some question to be decided at the hearing, and not to discovery of matter clearly not relevant to any such question ; *Mansell* v. *Feeney*, 2 J. & H. 320 ; *Turney* v. *Bayley*, 4 D. J. S. 332 ; *Moore* v. *Craven*, L. R. 7 Ch. 94 n. (1) ; *Carver* v. *Pinto Leite*, L. R. 7 Ch. 90 ; *Kettlewell* v. *Barstow*, L. R.

1711.
Summons for order to answer interrogatories (*o*).

Formal parts ; see ante No. 881.

on the part of the plaintiff [*or as may be*], that the defendant [*or as may be*], may be ordered, within —— days after service of the

7 Ch. 686 ; but, except in cases where the discovery was likely to prove injurious to the party making it, the Court did not weigh very nicely the question of materiality or immateriality, but gave the party discovery of anything reasonably likely to assist him at the hearing ; *Moore* v. *Craven*, *ubi supra ; Carver* v. *Pinto Leite*, *ubi supra ; Elmer* v. *Creasy*, L. R. 9 Ch. 69 ; *Saull* v. *Browne*, L. R. 9 Ch. 364. In such cases, the party interrogated may take the objection in his affidavit in answer ; R. S. C. Ord. XXXI. 5 (R. S. C. Nov. 1878, r. 3) ; or he may apply to postpone the discovery, under R. S. C. Ord. XXXI. 19 ; see note (*f*) to No. 1707 *ante ;* (**3.**) Matter which forms or supports the title or the case of the party interrogated, and does not in any way impeach his case, nor form nor support the title or the case of the party interrogating ; *Combe* v. *Corporation of London*, 1 Y. & C. C. C. 631 ; 6 Jur. 571 ; *Kettlewell* v. *Barstow*, L. R. 7 Ch. 686 ; *Minet* v. *Morgan*, L. R. 8 Ch. 361 ; *Owen* v. *Wynn*, 9 Ch. D. 29 ; Dan. Pr. 496, 497 ; Seton, ed. 4, 162—164 ; (**4.**) Communications passing, either directly or through the medium of a third person, between the party interrogated and his professional legal advisers, as such, with reference to the matters in question, such communications being privileged, not only when made with reference to any then pending or expected litigation, but also when made before any dispute has arisen, and without reference to any litigation at all ; *Lawrence* v. *Campbell*, 4 Drew. 485, 490 ; *Minet* v. *Morgan*, L. R. 8 Ch. 361, 367, 368 ; *Anderson* v. *Bank of British Columbia*, 2 Ch. D. 644, 648, *seq.*, 656, 658 ; *English* v. *Tottie*, 1 Q. B. D. 141 ; *Bacon* v. *Bacon*, 34 L. T. 349 ; *Mostyn* v. *West Mostyn Coal & Iron Co.*, 34 L. T. 531 ; *Bullock* v. *Corrie*, 3 Q. B. D. 356 ; Dan. Pr. 488—496 ; Seton, ed. 4, 164—166 ; (**5.**) Information obtained by his solicitor, or by a third person, as agent for or as assistant of his solicitor, or even by the party himself, when acting as assistant to and under the directions of his solicitor, with a view to and for the purposes of litigation either already commenced or expected ; *Anderson* v. *Bank of British Columbia*, 2 Ch. D. 644 ; *English* v. *Tottie*, 1 Q. B. D. 141 ; *Bustros* v. *White*, 1 Q. B. D. 423, 427 ; *McCorquodale* v. *Bell*, 1 C. P. D. 471 ; *Friend* v. *London, Chatham, and Dover Railway Co.*, 2 Ex. D. 437 ; Dan. Pr. 488—496 ; Seton, ed. 4, 166, 167 ; and in a recent case, it was held that a party might resist the discovery of information obtained, after disputes had arisen, for the purpose of being furnished to his solicitor, although such information was not obtained by the directions or under the advice of the solicitor, and although it had not been communicated to the solicitor ; *Southwark and Vauxhall Water Co.* v. *Quick*, 3 Q. B. D. 315 ; (**6.**) Matter, the discovery of which is the whole object of the action, so that to enforce discovery would be equivalent to judgment in the plaintiff's favour ; *Lingen* v. *Simpson*, 6 Madd. 290 ; Dan. Pr. 1688 ; (**7.**) Matter, the discovery of which would be prejudicial to the public interest ; Dan. Pr. 1498.

(*o*) If any person interrogated omits to answer, the party interrogating may apply to the Court or a Judge for an order requiring him to answer ; and an order may be made requiring him to answer either by affidavit, or by *viva voce* examination, as the Judge may direct ; R. S. C. Ord. XXXI. 10 ; an application under this rule should be by summons in Chambers, and not by motion ;

order to be made upon this application, to make and file a full and sufficient affidavit in answer to the interrogatories [*Or*, to the interrogatories numbered —— of the interrogatories] delivered by the plaintiff [*or as may be*], for the examination of the said defendant [*or as may be*]. And that the said defendant [*or as may be*], may be ordered to pay the costs of this application.

1712.
Summons for party to attend and be examined *vivâ voce* (*o*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*or as may be*], that the defendant E. F. [*or as may be*] may be ordered to attend before his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——; *Or*, Mr. Justice ——], the Judge to whom this action is attached [*Or*, before C. B., esquire, an examiner of the Chancery Division of this Court], at such time and place, or times and places, as shall be appointed by notice in writing, for the purpose of being examined *vivâ voce* upon the interrogatories delivered by the plaintiff [*or as may be*] for the examination of the said defendant [*or as may be*]. And that the said defendant [*or as may be*] may be ordered to pay the costs of this application.

1713.
Summons to consider sufficiency of answer, and for order to answer further (*p*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*or as may be*], to consider the sufficiency of the answer of the defendant —— [*or as may be*], filed the —— day of ——, 187—, to the interrogatories numbered —— of the interrogatories delivered by the plaintiff [*or as may be*] for the examination of the said defendant [*or as may be*]. And that the said defendant [*or as may be*] may be ordered, within —— days after service of the order to be made upon this application, to make and file a full and sufficient affidavit in

Chesterfield Colliery Co. v. *Black*, 24 W. R. 783; and, notwithstanding a reference to a referee, the application should be to the Judge; *Rowcliffe* v. *Leigh*, 4 Ch. D. 661. An order to answer interrogatories must be made, under this rule, before the party interrogating can proceed to attach the person interrogated, or apply to dismiss his action, if he be a plaintiff, or to strike out his defence, if he be a defendant; R. S. C. Ord. XXXI. 20. Service of the order to answer on the solicitor of the party interrogated will be sufficient service thereof; R. S. C. Ord. XXXI. 21; *Re Mulcaster*, *Dalston* v. *Nanson*, 26 W. R. 434; but, if an application be made to attach such party for disobedience to the order, he may show in answer to the application that he had no notice or knowledge of the order; R. S. C. Ord. XXXI. 21. A solicitor upon whom an order to answer interrogatories is served under the above rule, and who neglects without reasonable excuse to give notice thereof to his client, will be liable to attachment; *Ibid.*, rule 22.

(*o*) See note (*o*) to No. 1711 *ante*.

(*p*) No exceptions may be taken to any affidavit in answer to interrogatories, but if the party interrogated answers insufficiently, the party interrogating may apply to the Court or Judge by motion or summons, for an order requiring the party interrogated to answer further, and the sufficiency or otherwise of

further answer to the said interrogatories numbered ——. And that the said defendant [*or as may be*] may be ordered to pay the costs of this application.

1714.
Summons for order to answer, notwithstanding objection (*q*).

Formal parts: see ante No. 881.
on the part of the plaintiff [*or as may be*], that, notwithstanding the objections raised by the defendant —— [*or as may be*], by his affidavit, filed the —— day of ——, 187—, to answer the interrogatories numbered —— of the interrogatories delivered by the plaintiff [*or as may be*] for the examination of the said defendant [*or as may be*], the said defendant —— [*or as may be*] may be ordered, within —— days after service of the order to be made upon this application, to make and file a full and sufficient affidavit in answer to the said interrogatories numbered ——. And that the said defendant [*or as may be*] may be ordered to pay the costs of this application.

1715.
Summons to dismiss action, for non-compliance of plaintiff with order to answer (*r*).

Formal parts: see ante No. 881.
on the part of the defendant that, the plaintiff having failed to comply with the order made in this action, dated the —— day of ——, 187—, to answer the interrogatories [*Or*, the interrogatories numbered —— of the interrogatories] delivered by the said defendant for the examination of the said plaintiff, this action may be dismissed

[*If there are other defendants than the applicant, add;*] as against the said defendant

for want of prosecution, with costs to be paid by the said plaintiff to the said defendant.

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the affidavit will then be determined by the Court or Judge; and an order may be made requiring the party interrogated to answer further, either by affidavit, or by *viva voce* examination, as the Judge may direct; R. S. C. Ord. XXXI. 9, 10. The application should be by summons in Chambers, and not by motion; *Chesterfield Colliery Co.* v. *Black*, 24 W. R. 783; and the summons should specify the particular answers objected to as insufficient; *Ibid.* Where the party interrogated objects, on some ground stated in the affidavit, to answer any interrogatory, the application should not be to consider the sufficiency of his answer, but for an order that notwithstanding his objection he do answer; see No. 1714 *post*. As to the service of an order to answer further, see R. S. C. Ord. XXXI. 21, 22; and note (*o*) to No. 1711 *ante*.

(*q*) See R. S. C. Ord. XXXI. 10, and note (*o*) to No. 1711 *ante*. The application should be by summons, and not by motion; *Chesterfield Colliery Co.* v. *Black*, 24 W. R. 783. As to service of the order to answer, see R. S. C. Ord. XXXI. 21, 22, and note (*o*) to No. 1711 *ante*.

(*r*) If any party fail to comply with an order to answer interrogatories, he will, if a plaintiff, be liable to have his action dismissed for want of prosecution, or, if a defendant, to have his defence, if any, struck out, and to be

1716.
Summons to strike out defence for non-compliance of defendant with order to answer (*r*).

Formal part: see ante No. 881.
on the part of the plaintiff that, the defendant [*Or*, the defendant ——] having failed to comply with the order made in this action, dated the —— day of ——, 187—, to answer the interrogatories [*Or*, the interrogatories numbered —— of the interrogatories] delivered by the plaintiff for the examination of the said defendant, the statement of defence delivered by the said defendant on the —— day of ——, 187—, may be struck out, and that the said defendant may be placed in the same position as if he had not defended this action. And that the said defendant may be ordered to pay the costs of this application.

1717.
Proceedings to attach party for non-compliance with order (*s*).

[*Same as* Nos. 1375 *to* 1379 *ante.*]

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placed in the same position as if he had not defended; and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly; R. S. C. Ord. XXXI. 20. The application should be made by summons at Chambers, and not by motion; see *Chesterfield Colliery Co.* v. *Black*, 24 W. R. 783; *Freason* v. *Loe*, 26 W. R. 138. The effect of an order dismissing the action, unless the plaintiff comply with the order within a limited time, is that, at the expiration of the time limited, unless the interrogatories have been answered, the action is at an end; and an order giving further time to answer is *ultra vires*; *Whistler* v. *Hancock*, 3 Q. B. D. 83. Under the old practice, the Court of Chancery had power to dismiss a bill, where the plaintiff made default in giving discovery: *Republic of Liberia* v. *Roye*, L. R. 9 Ch. 569; 1 App. Cas. 139; and where a defendant made default in answering interrogatories, the Court might order the bill to be taken *pro confesso*; 11 Geo. IV. & 1 Wm. IV. c. 36, s. 3; Cons. Ord. XXII.; Dan. Pr. 441, *et seq.* It is within the discretion of the Judge to exercise the power given by R. S. C. Ord. XXXI. 20; *Hartley* v. *Owen*, W. N. (1876), 193; and the power will only be exercised in the last resort, as the provision is a highly penal one; *Twycross* v. *Grant*, W. N. (1875), 201; *Anon.*, W. N. (1875), 202; for cases in which it has been exercised, see *Rep. of Liberia* v. *Roye*, *ubi supra*, where the plaintiff's bill was dismissed; and *Fisher* v. *Hughes*, 25 W. R. 528, and *Twycross* v. *Grant*, W. N. (1875), 229, where the defendant's defence was ordered to be struck out. In *Fisher* v. *Hughes*, *ubi supra*, the plaintiff afterwards set down the action on motion for judgment against the defendant whose defence was struck out, as if he had made default in delivering a defence or demurrer, and judgment was given against him in his absence under R. S. C. Ord. XXIX. 11. An application under rule 20 *supra*, can only be made where there has been an order to answer the interrogatories; for forms of application for such order, see *ante* Nos. 1711—1714.

(*r*) See note (*r*) to No. 1715 *ante*.

(*s*) If any party fails to comply with an order to answer interrogatories, he will be liable to attachment; R. S. C. Ord. XXXI. 20. As to attachment, see R. S. C. Ord. XLII. and Ord. XLIV.; and *ante* Nos. 1375—1392. But a party is not liable to an attachment for not answering interrogatories, until there has been an order made upon him to do so; R. S. C. Ord. XXXI. 20.

Section II.—Discovery and Inspection of Documents (*a*).

Part I.—Discovery of Documents.

1718. Summons for affidavit as to documents (*b*).

Formal parts: see ante No. 881.
on the part of the plaintiff; *Or*,
of the defendant A. B.; *Or*,
of C. D., who has been served with a notice issued by the defendant A. B., under the Rules of the Supreme Court,

(*a*) The Court or a Judge may, at any time during the pendency of any action or proceeding, order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action or proceeding, as the Court or Judge shall think right; and the Court may deal with such documents when produced, in such manner as may appear just; R. S. C. Ord. XXXI. 11. This rule is copied from 15 & 16 Vict. c. 86, ss. 18, 20; in its terms it deals both with discovery of documents, and with discovery of their contents by inspection; the subsequent rules, from 12 to 18, of Ord. XXXI., deal with the same matters, and being more specific in their provisions, may probably be regarded as pointing out the mode in which the discovery and production referred to in rule 11 *supra*, are to be obtained. It has been decided that, under this rule, as under the 15 & 16 Vict. c. 86, ss. 18, 20, the Court or Judge has no discretionary power to refuse any party the discovery sought by him, relative to the matters in question, except upon the ground of privilege; each party has a right to discovery where no privilege is established; *Bustros* v. *White*, 1 Q. B. D. 423; and see *English* v. *Tottie*, 1 Q. B. D. 141, 144. By the Court of Chancery, interlocutory orders for production were made upon two principles; (1) discovery for the purposes of the suit; and (2) security pending litigation; *Lingen* v. *Simpson*, 6 Madd. 290; the last paragraph of rule 11, enabling the Court to deal with the documents when produced, in such manner as may appear just, enables the Court to provide for the safe custody of the documents pending the litigation; see *post* No. 1741.

(*b*) Any party may, without filing an affidavit, apply to a Judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action; R. S. C. Ord. XXXI. 12. Under this rule, coupled with rule 11 of the same order, the Court or Judge has no discretionary power as to granting the desired discovery, but any party has a right to discovery; *Bustros* v. *White*, 1 Q. B. D. 423, 426; and *English* v. *Tottie*, 1 Q. B. D. 141, 144. Notwithstanding a reference to a referee, the application should be made to the Judge to whom the action was assigned, and not to the referee; *Rowcliffe* v. *Leigh*, 4 Ch. D. 661. A defendant in an action for the recovery of the possession of land, is liable to make discovery of the documents in his possession; *New British Mutual Investment Co.* v. *Peed*, 26 W. R. 354; see *Owen* v. *Wynn*, 26 W. R. 552. In actions on policies of marine insurance, an order may be obtained for the discovery of documents in the possession or power of persons not parties to the action; *West of England and South of Wales District Bank* v. *Canton Insurance Co.*, 2 Exch. D. 472. A plaintiff will not, in general, be allowed discovery before he has delivered his statement of claim; *Cashin* v. *Craddock*, 2 Ch. D. 140; nor when a de-

Ord. XVI., rule 18, and has appeared thereto, and obtained liberty to defend this action ; *Or*,
of (the defendant) C. D., who has been served with a counter-claim of the defendant A. B. in this action (*bb*) ; *Or*,
of A. B., who, by an order dated the —— day of ——, 187—, has liberty to attend the proceedings under the judgment dated the —— day of ——, 187— (*c*) ; *Or*,
of A. B., who claims to be a creditor upon the estate of C. D. the testator in the judgment dated the —— day of ——, 187—, named (*d*) ; *or as may be ;*
that the defendant A. B. ; *Or*,
that the defendants A. B., C. D., and E. F. (*e*) ; *Or*,
that the plaintiff ; *Or*,
that C. D., who has been served with a notice [*&c. ; as above*] ; *Or*,
that (the defendant) C. D., who has been served with a counter-claim [*&c. ; as above*] (*f*) ; *Or*,
that A. B., who, by an order dated [*&c. ; as above*] ; *Or*,
that A. B., who claims to be a creditor [*&c. ; as above*] (*g*) ;
may be ordered, within —— days after service of the order to be

murrer to the whole statement of claim has been delivered, and is still pending ; Dan. Pr. 466, 1689 ; Seton, ed. 4, p. 156 ; and it is presumed that, by analogy to the old practice, a defendant will not in general be allowed discovery until he has put in his statement of defence ; see Dan. Pr. 1676, and notes (*m*) and (*n*). Under the old practice, a defendant could not obtain discovery from a co-defendant before decree, but after decree he might do so ; Dan. Pr. 1682, and notes (*a*) and (*b*) ; but it is apprehended that, under the new practice, where a defendant has set up a counter-claim against a co-defendant, either of such defendants may, before the trial, obtain discovery from the other of them, of matters relating to the counter-claim ; for such counter-claim is in the nature of a cross-action, and the defendant setting it up is in the position of a plaintiff in a cross-action, and the persons against whom it is set up, in the position of defendants thereto ; see *ante*, note (*a*), at p. 255. It may also be objected to the application, that the right to the discovery sought depends upon the determination of some issue or question in dispute in the action, or that for some other reason it is desirable that some issue or question in dispute should be determined before the right to the discovery sought is decided upon, and the Court or Judge may order such issue or question to be determined first, and may reserve the question as to the discovery ; R. S. C. Ord. XXXI. 19 ; for the cases decided upon this rule, see note (*f*) to No. 1707 *ante*.

(*bb*) See note (*b*) *supra*.

(*c*) See *Lockwood* v. *Whcelright*, V.-C. S. at Chambers, 22 Feb. 1856, Reg. Lib. B. 540.

(*d*) See Dan. Pr. 1065, 1098, 1677, note (*u*), 1683.

(*e*) There is no objection to include in one summons applications against several parties, though represented by separate solicitors ; Dan. Pr. 1677, note (*z*) ; for forms of order in such a case, see Seton, ed. 4, pp. 134, 135, Nos. 4, 5.

(*f*) See note (*bb*) *supra*.

(*g*) *Re Pine*, *Pine* v. *Ellis*, M. R. at Chambers, 18 Nov. 1863, Reg. Lib. B. 2267.

made upon this application (*h*), to make and file a full and sufficient affidavit,

[*If the application is made against a corporation or body of persons, say ;*] to file a full and sufficient affidavit : to be made by ——, their secretary [*or as may be*] (*j*) ;

stating whether he has or has had in his possession or power

[*If the application is made against several persons, say ;*] stating whether they or either (or any) of them have or have had or has or has had in their or his possession or power (*k*)

[*If the application is made against a corporation or body of persons, say ;*] stating whether the said —— Company, Limited [*or as may be*], have or have had in their possession or power (*l*)

any and (if any) what documents relating to the matters in question in this action ; *Or*,

relating to the counter-claim set up by the defendant A. B. in this action (*m*) ; *Or*,

relating to the said claim made by the said A. B. against the estate of the said testator C. D. (*n*) ;

and accounting for the same. And that the costs of this application may be costs in the action.

1719. Summons to extend time for filing affidavit as to documents (*o*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be ; see ante* No. 1718], that the time limited by the order dated the —— day of ——, 187—, for the applicant to make and file an affidavit as to documents

(*h*) Service of the order on the solicitor of the party will be sufficient service ; R. S. C. Ord. XXXI. 21 ; but if an application for an attachment for disobedience to the order be made, the party against whom it is made may show in answer that he has had no notice or knowledge of the order ; *Ibid.* ; if the solicitor upon whom the order is served, neglects, without reasonable excuse, to give notice thereof to his client, he will himself be liable to an attachment ; *Ibid.*, rule 22.

(*j*) Where discovery of documents is sought from a corporation or other body, the affidavit should be directed to be made by some member or officer of such body ; see Dan. Pr. 1677, and note (*a*) ; Seton, ed. 4, 150 ; and compare R. S. C. XXXI. 4. For form of order, see *Ranger* v. *Great Western Railway Co.*, L.JJ., 27 April, 1859, Reg. Lib. B. 1574 ; *Ryde Commissioners* v. *Isle of Wight Ferry Co.*, V.-C. W. at Chambers, 19 Feb. 1861, Reg. Lib. B. 277 ; *A.-G.* v. *Castleford Local Board of Health*, V.-C. B. at Chambers, 29 July, 1870, Reg. Lib. A. 2149 ; *Rep. of Liberia* v. *Imperial Bank*, V.-C. M., 31 May, 1873, Reg. Lib. B. 1327 ; Seton, ed. 4, p. 135, Nos. 6, 7. As to the officer or member by whom the affidavit should be made, see *Brown* v. *Thames, &c., Co.*, 43 L. J. C. P. 112 ; *McFadzen* v. *Corp. of Liverpool*, L. R. 3 Exch. 279 ; *Corp. of Hastings* v. *Ivall*, L. R. 8 Ch. 1017 ; *Rep. of Liberia* v. *Roye*, 1 App. Cas. 139.

(*k*) See Seton, ed. 4, 134, No. 4.

(*l*) See Seton, ed. 4, 134, Nos. 6, 7.

(*m*) See note (*b*) *supra*.

(*n*) See note (*d*) *supra*.

(*o*) The time is limited by the order to make the affidavit. The time runs

may be (further) enlarged to the —— day of ——, 187—. And that the costs of this application may be costs in the action (*p*).

1720. Affidavit admitting the possession of documents (*q*).

Formal parts : see ante No. 693.

I. I [*Or*, We ; *Or*, The above-named defendants, the —— Company, Limited ; *or as may be*] have in my [*Or*, our ; *Or*, their] possession or power the documents relating to the matters

in the long vacation ; R. S. C. Ord. LVII. 5 ; but may be enlarged by the Court or a Judge, and that notwithstanding the previous expiration of the time allowed ; *Ibid.*, rule 6. For orders in like case, see *Dicker* v. *Gillespie*, V.-C. S. at Chambers, 15 Jan. 1864, Reg. Lib. A. 2 ; *Nowell* v. *Nowell*, V.-C. W. at Chambers, 29 Dec. 1865, Reg. Lib. B. 2476 ; *Upton* v. *Upton*, M. R. at Chambers, 5 Jan. 1869, Reg. Lib. B. 6 ; *Powis* v. *Adams*, V.-C. M. at Chambers, 15 July, 1869, Reg. Lib. B. 2620.

(*p*) See *ante* note (*d*) to No. 402.

(*q*) See R. S. C. Ord. XXXI. 13, and App. (B), No. 9. This form should be adhered to, and only varied in so far as may be necessary to meet the circumstances of the case ; it "is the right form, and is intended to be the common form. An affidavit of documents is intended now to be exhaustive, and the form given in the Act is so ;" *per* Lindley, J., *Anon.*, W. N. (1878), 39, 40. The paragraphs numbered 2, 3, and the sub-division of the first schedule are necessary only where the party making the affidavit claims privilege for any of his documents ; the paragraphs numbered 4, 5, 6, and the second schedule are necessary only where the party has parted with documents relating to the matters in question. The affidavit must specify all the documents which the deponent has in his possession or power, relating to the matters in question, even though he claim privilege for them ; but any identification of documents which is sufficient to enable the Court to order their production is sufficient ; *Taylor* v. *Batten*, 27 W. R. 106 (C. A.) ; *Fortescue* v. *Fortescue*, 24 W. R. 945 ; *Taylor* v. *Oliver*, 34 L. T. 902 ; thus, where documents were described as "numbered from 30 to 70 and tied up in a bundle and initialed," this was held a sufficient description ; *Taylor* v. *Batten*, *ubi supra* ; so, a defendant in an action for the recovery of the possession of land, when making discovery of his title deeds, need only say that he has in his possession certain title deeds numbered consecutively, and give the numbers ; *New British Mutual Investment Co.* v. *Peed*, 3 C. P. D. 196, *per* Lindley, J. The deponent cannot be cross-examined on this affidavit ; *Manby* v. *Bewicke*, 8 D. M. & G. 470 ; *per* Wood, L. J., in *Wright* v. *Pitt*, L. R. 3 Ch. 810 ; Dan. Pr. 1680, and note (*k*) ; Seton, ed. 4, p. 149 ; nor can evidence be adduced to contradict it ; *per* Wood, V.-C., in *Newall* v. *Telegraph Construction Co.*, L. R. 2 Eq. 756, at p. 762 ; *per* Wood, L. J. in *Wright* v. *Pitt*, L. R. 3 Ch. 810 ; the affidavit is final and conclusive, unless something appears in the affidavit or the schedule thereto which enables the Court to say they cannot rely upon the affidavit ; *Taylor* v. *Batten*, 27 W. R. 106. If the party seeking discovery suspects that any documents have been kept back, his only course is to interrogate upon the point ; *Newall* v. *Telegraph Construction Co.*, L. R. 2 Eq. 756 ; unless there is anything in the affidavits or pleadings of the party making the affidavit as to documents, throwing discredit upon that affidavit, in which case, but not otherwise, the party seeking discovery may apply for an order for a further affidavit ; *Noel* v. *Noel*, 1 D. J. S. 468 ; *Wright* v. *Pitt*, L. R. 3 Ch. 809 ; *Saull* v. *Browne*,

in question in this action set forth in the first and second parts of the first schedule hereto.

2. I [*Or*, We ; *Or*, The said defendants, the —— Company, Limited ; *or as may be*] object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*Here state upon what grounds the objection is made and verify the facts, as far as may be* (*r*)].

4. I [*Or*, We ; *Or*, The said defendants, the —— Company, Limited] have had, but have not now, in my [*Or*, our ; *Or*, their] possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.

5. The last mentioned documents were last in my [*Or*, our] possession or power [*Or*, were last in the possession or power of the said —— Company, Limited] on [*State when*].

6. That [*State what has become of the last mentioned documents, and in whose possession they now are*].

7. According to the best of my [*Or*, our] knowledge, information, and belief, I [*Or*, we ; *Or*, the said —— Company, Limited], have not now, and never have had in my [*Or*, their], possession, custody, or power

L. R. 17 Eq. 402 ; Dan. Pr. 1681, and notes (*n*) and (*o*) ; Seton, 149 ; for forms of application for a further affidavit, see *post* Nos. 1723, 1724.

(*r*) The affidavit must specify which (if any) of the documents admitted to be in his possession the deponent objects to produce ; R. S. C. Ord. XXXI. 13 ; and, notwithstanding his objection, he must describe such documents with sufficient distinctness to enable the Court to order production if the objection should be overruled ; Dan. Pr. 1679, and note (*u*) ; Seton, ed. 4, p. 150 ; *Fortescue* v. *Fortescue*, 24 W. R. 945 ; *Taylor* v. *Oliver*, 34 L. T. 902 ; *New British Mutual Investment Co.* v. *Peed*, 3 C. P. D. 196, *per* Lindley, J. ; *Taylor* v. *Batten*, 27 W. R. 106 ; and note (*q*), *supra*. The affidavit must also state, clearly and distinctly, the reasons or objections against production, and must verify the facts upon which such reasons or objections depend ; see form 9 in App. (B) to the Rules of the Supreme Court ; Dan. Pr. 1679, and note (*t*). The general rule is, that all documents relating to the matters in question in the action must be produced ; Dan. Pr. 1687 ; but a party may resist the production of documents upon the same general grounds upon which he may resist giving any other discovery ; see *ante*, note (*n*) to No. 1710, and the authorities there cited. It is not a valid ground for resisting production of documents that other persons not parties to the suit have an interest therein ; *Kettlewell* v. *Barstow*, L. R. 7 Ch. 686 ; Dan. Pr. 1685, 1686 ; but a party cannot be required to produce documents which are in the joint possession of himself and other persons not parties to the action, for the reason that it is not in his power to produce such documents ; *Hadley* v. *McDougall*, L. R. 7 Ch. 312 ; *per* James, L. J., in *Kettlewell* v. *Barstow*, *ubi supra*, at p. 691 ; Dan. Pr. 1683, 1684, and notes (*o*), (*p*), and (*r*) ; but in such a case the party may be compelled, by means of interrogatories, to discover the contents of the documents ; Dan. Pr. 1684, and note (*q*) ; *Hadley* v. *McDougall*, L. R. 7 Ch. 312 ; and in an action on a policy of marine insurance, a party may be required to produce documents in the possession of persons not parties to the action ; *West of England and South of Wales District Bank* v. *Canton Insurance Co.*, 2 Exch. D. 472.

[*Where there are several deponents, say;*] in the possession, custody, or power of us, or either [*Or*, any] of us

or in the possession, custody, or power of my [*Or*, their] solicitors or agents, solicitor or agent,

[*Where there are several deponents, say;*] of any solicitors, or agents, solicitor or agent for us, or either [or any] of us,

or in the possession, custody or power of any other persons or person on my [*Or*, their] behalf,

[*Where there are several deponents, say;*] on behalf of us or either [or any] of us,

any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

The first schedule above referred to.

First part.

Second part.

The second schedule above referred to.

1721. Affidavit denying the possession of any documents (*s*).

Formal parts; see ante No. 693.

1. According to the best of my [*Or*, our] knowledge, information and belief [*Continue as in paragraph 7 of No.* 1720 *ante, down to*, relative to such matters or any of them.]

1722. Summons to consider sufficiency of affidavit as to documents (*t*).

Formal parts; see ante No. 881.

on the part of the plaintiff [*or as may be; see ante* No. 1718,] to consider the sufficiency of the affidavit of the defendant [*or as may be*], filed the —— day of ——, 187—, as to the possession of documents, pursuant to the order dated the —— day of ——, 187—. And that the said defendant [*or as may be*] may be ordered to pay the costs of this application.

(*s*) See *ante*, note (*q*) to No. 1720.

(*t*) The application should only be in this form, where the affidavit as to documents is insufficient in form; where a party desires to obtain the production of documents which the opposite party has objected to produce, he should apply under R. S. C. Ord. XXXI. 11, 18, for their production, notwithstanding the objection; see No. 1736 *post*. But where the affidavit is informal, by reason of its not containing a clear admission or denial of the possession of documents, or a sufficient description of them, or otherwise, a summons to consider the sufficiency of the affidavit should be taken out; if the affidavit is held to be insufficient, the order merely expresses the Judge's opinion to that effect, and the effect of this is that the party who is ordered to make the affidavit is considered not to have complied with the order, and may be proceeded against accordingly; Dan. Pr. 1680; for form of order, see

1723.
Summons for further affidavit as to particular documents (*u*).

Formal parts ; see ante No. 881.

on the part of the plaintiff [*or as may be ; see ante* No. 1718], that the defendant, A. B. [*or as may be ; see ante* No. 1718], may be ordered, within —— days after service of the order to be made upon this application, to make and file a further full and sufficient affidavit, stating whether he has or has had in his possession or power any, and (if any) which of the following documents relating to the matters in question in this action, and accounting for the same, that is to say, [*Here describe, as precisely as possible, the documents as to which discovery is sought*].

1724.
Another form (*u*).

Formal parts ; see ante No. 881.

on the part of the plaintiff [*or as may be ; see ante* No. 1718,] that the defendant, A. B. [*or as may be ; see ante* No. 1718], may be ordered, within —— days after service of the order to be made upon this application, to make and file a further full and sufficient affidavit, stating whether he has or has had in his possession or power any, and (if any) what documents relating to the matters in question in this action, and accounting for the same ; and particularly the following documents, that is to say [*Here describe, as precisely as possible, the documents as to which discovery is sought*].

Smedley v. *Smedley*, M. R. at Chambers, 10 Feb. 1869, Reg. Lib. B. 186 ; *Winder* v. *Waters*, V.-C. J. at Chambers, 20 Dec. 1869, Reg. Lib. B. 3290 ; Seton, ed. 4, 137, No. 11.

(*u*) A party cannot be cross-examined upon his affidavit as to documents ; nor can evidence be adduced to contradict it ; and if the party seeking discovery suspects that any documents have been kept back, his only course is to interrogate upon the point ; see note (*q*) to No. 1720 *ante ;* but if there is anything in the affidavits or pleadings of the party making the affidavit as to documents, throwing discredit upon that affidavit, then, but not otherwise, the party seeking discovery may apply for an order requiring the other party to make a further affidavit as to the possession of the documents, which from his pleadings or affidavits appear to be in his possession ; *Noel* v. *Noel*, 1 D. J. S. 468 ; *Wright* v. *Pitt*, L. R. 3 Ch. 809 ; *Saull* v. *Browne*, L. R. 17 Eq. 402 ; Dan. Pr. 1681, and notes (*n*) and (*o*) ; Seton, 149 ; it is not necessary that there should be an express admission in the other affidavits or pleadings of the party, of the possession of relevant documents, not admitted by his affidavit as to documents ; it is sufficient if the Judge be satisfied, by inference from statements in such other affidavits or documents, that the party has in his possession relevant documents, not admitted by his affidavit as to documents ; *Saull* v. *Browne, ubi supra.* For order on summons in form No. 1723, see *Zambaco* v. *Cassavetti*, M. R. at Chambers, 9 Dec. 1869, Reg. Lib. B. 3067 ; *Fenton* v. *Fenton*, M. R., 4 May, 1876, Reg. Lib. A. 1031 ; Seton, ed. 4, p. 137, No. 12 ; for order on summons in form No. 1724, see *Fearnehough* v. *Fernell*, V.-C. M. at Chambers, 21 June, 1876, Reg. Lib. A. 1115 ; Seton, ed. 4, p. 137, No. 13. As to service of the order, see R. S. C. Ord. XXXI. 21, 22 ; and note (*h*) to No. 1718 *ante.*

1725.

Summons to dismiss action for non-compliance of plaintiff with order for affidavit as to documents (*v*).

Formal parts; see ante No. 881.

on the part of the defendant A. B., that, the plaintiff having failed to comply with the order made in this action, dated the —— day of ——, 187—, to make and file a full and sufficient affidavit, stating whether he has or has had in his possession or power any, and (if any) what documents relating to the matters in question in this action, this action may be dismissed

[*If there are other defendants than the applicant, add,*] as against the said defendant,

for want of prosecution, with costs to be paid by the said plaintiff to the said defendant.

1726.

Summons to strike out defence for non-compliance of defendant with order for affidavit as to documents (*v*).

Formal parts; see ante No. 881.

on the part of the plaintiff, that, the defendant [*Or*, the defendant ——] having failed to comply with the order made in this action, dated the —— day of ——, 187—, to make and file a full and sufficient affidavit, stating whether he has or has had in his possession or power any, and (if any) what documents relating to the matters in question in this action, the statement of defence delivered in this action by the said defendant on the —— day of ——, 187—, may be struck out, and that the said defendant may be placed in the same position as if he had not defended this action. And that the said defendant may be ordered to pay the costs of this application.

1727.

Proceedings to attach a party for non-compliance with order (*w*).

[*Same as* Nos. 1375 *to* 1379 *ante.*]

(*v*) If any party fails to comply with any order for discovery, he will, if a plaintiff, be liable to have his action dismissed for want of prosecution; or, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and the opposite party may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly; R. S. C. Ord. XXXI. 20. The application should be by summons at Chambers, and not by motion; see *Chesterfield Colliery Co.* v. *Black*, 24 W. R. 783; *Freason* v. *Loe*, 26 W. R. 138. For the cases decided on this rule, see *ante*, note (*r*) to No. 1715.

(*w*) If any party fails to comply with an order for discovery of documents, he will be liable to attachment; R. S. C. Ord. XXXI. 20. As to attachment, see R. S. C. Ord. XLII., and Ord. XLIV.; and *ante* Nos. 1375—1392.

PART II.—DISCOVERY BY INSPECTION OF DOCUMENTS.

1728.

Notice to produce documents for inspection (*a*).

Formal parts: see ante No. 21.

Take notice that the plaintiff [*Or*, the defendant C. D.; *or as may be; see ante* No. 1718] requires you to produce for his inspection the documents referred to in (the —— paragraphs of) your statement of claim [*Or*, of defence; *or as may be*] delivered on the —— day of ——, 187— [*Or*, referred to in the affidavit of ——, filed in this action on the —— day of ——, 187—, and in the first and second parts of the first schedule thereto; *or as may be*].

(*a*) Every party to an action or other proceeding is entitled, at any time before, or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving the notice, or of his solicitor, and to permit him or them to take copies thereof; R. S. C. Ord. XXXI. 14. For form of notice, see R. S. C. Ord. XXXI. 15, and App. (B), form No. 10. If the party to whom such notice to inspect is given, does not comply therewith, he will not afterwards be at liberty to put any document referred to in such notice in evidence on his behalf in such action or proceeding, unless he satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with the notice; R. S. C. Ord. XXXI. 14; and the opposite party may apply for an order for inspection; *Ibid.*, rule 17; but no application can be made to attach the party for non-compliance with the notice, nor can the party giving the notice apply to dismiss the action, where the party failing to comply with the notice is plaintiff, or to strike out his defence, where he is a defendant; an order, requiring him to produce the documents for inspection, must be first obtained, and then, upon non-compliance with the order, an application may be made for an attachment, or to dismiss the action, or to strike out the defence (as the case may be); R. S. C. Ord. XXXI. 20. If the documents are produced, only the party giving the notice or his solicitor is entitled to inspect; if it is desired that any special agent of the party should inspect the documents, an order must be obtained for the purpose; see Dan. Pr. 1696, 1697; and *post* No. 1736, and note (*q*) thereto. The party giving the notice is entitled to take copies of or extracts from the documents, for which he must pay the solicitor of the party producing the documents at the rate of 4*d.* per folio; but if such solicitor refuses or neglects to supply such copies or extracts, then the solicitor requiring the same will be at liberty to make them, and the solicitor for the party producing will not be entitled to any fee in respect thereof; R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 16. No costs will be allowed in respect of any notice or inspection, unless it be shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice or making such inspection; *Ibid.*, rule 15.

1729.
Another form (*a*).

Formal parts : see ante No. 21.

Take notice that the plaintiff [*or as may be ; see ante* No. 1718] requires you to produce for his inspection the following documents referred to in [*&c. : as in last form*], that is to say [*Here describe the particular documents required to be produced*].

1730.
Notice of motion or summons to have inspection postponed until after issue or question determined (*b*).

Formal parts : see ante No. 1571 *or* 881.

on the part of the defendant [*or as may be*], that [*Continue as in form* No. 1707 *ante, as to the trial of an issue of fact or law*]. And that the inspection by the plaintiff [*or as may be*] of the documents referred to in his notice, dated the —— day of ——, 187—, may be postponed until after the said questions or issues shall have been determined. And that after the determination thereof either party may be at liberty to make such application as to an inspection of the said documents as he may be advised. And that the costs of this application may be costs in the action.

1731.
Summons for time to produce documents for inspection (*c*).

Formal parts : see ante No. 881.

on the part of the defendant [*or as may be*], that the time allowed for the applicant to produce for the inspection of the plaintiff [*or*

(*a*) See note (*a*) to No. 1728 *ante*.

(*b*) If the party from whom inspection is sought, objects to the same or any part thereof, the Court or a Judge may, if satisfied that the right to the inspection sought depends upon the determination of any question or issue in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the inspection, order that such issue or question be determined first, and reserve the question as to the inspection ; R. S. C. Ord. XXXI. 19 ; see No. 1707 *ante*, and notes thereto.

(*c*) The party to whom a notice to produce documents for the inspection of the opposite party has been given, under R. S. C. Ord. XXXI. 14 (*supra* note (*a*) to No. 1728), must, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in an affidavit as to documents, or, if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same, a notice stating a time within three days from the delivery thereof, at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor ; R. S. C. Ord. XXXI. 16. The time may, however, be enlarged by the Court or a Judge, and that notwithstanding the previous expiration of the time allowed ; R. S. C. Ord. LVII. 6. As to the consequences of not giving the notice or allowing inspection, see note (*a*) to No. 1728 *ante*.

as may be] or his solicitor, the documents referred to in the notice given by the said plaintiff [*or as may be*], and dated the —— day of ——, 187—, may be (further) enlarged to the —— day of ——, 187—. And that the costs of this application may be costs in the action (*d*).

1732. Summons for leave to seal up irrelevant or privileged matter (*e*).

Formal parts : see ante No. 881.

on the part of the defendant [*or as may be*], that he may be at liberty to seal up such parts of the documents referred to in the notice given by the plaintiff [*or as may be*] in this action, and dated the —— day of ——, 187—, as, according to an affidavit to be made by the said defendant, do not relate to the matters in question in this action [*Or*, are privileged from production to the said plaintiff].

1733. Affidavit of sealing up irrelevant matter (*f*).

Formal parts : see ante No. 693.

1. [*Identify the documents of which parts have been sealed up ; as thus :*] The two documents now produced and shown to me, and marked respectively A. and B. (*g*), are respectively the [*Describe them*], referred to in the —— paragraph of my statement of defence [*or as may be*] in this action [*Or*, referred to in the first part of the first schedule to my affidavit filed in this action on the —— day of ——, 187—].

2. I have sealed up such parts of the said exhibited documents marked A. and B. as do not relate to the matters in question in this action [*Or*, as are privileged from production to the plaintiff [*or as may be*]].

3. [*Verify the grounds on which the parts are sealed up ; as thus :*] No portion of the parts of the said documents sealed up relates to the matters in question in this action, or any of them [*Or*, The parts of the said documents sealed up contain matter relating exclusively to my case in this action, and do not contain anything impeaching my case, nor anything forming or supporting the title or the case of the plaintiff, nor anything in any manner material to the plaintiff's case in this action (*h*) ; *or as may be* (*j*)].

(*d*) See note (*d*) to form No. 402 *ante*.

(*e*) If any of the documents relevant to the matters in question contain also matter not relevant, or matter which the party producing the documents claims to be privileged from production, the party may not mutilate the documents by cutting out the irrelevant or privileged matter, but should apply for leave to seal up such matter ; Dan. Pr. 1681, 1682 ; Seton, ed. 4, 155, 156. For form of order, see *Beghie* v. *Fenwick*, V.-C. M. at Chambers, 10 Dec. 1866, Reg. Lib. A. 2710 ; and see Seton, ed. 4, 134, No. 3.

(*f*) See note (*e*) to No. 1732 *ante*.

(*g*) The documents should be exhibited ; for form of memorandum of exhibit, see *ante* No. 723.

(*h*) See *Kettlewell* v. *Barstow*, L. R. 7 Ch. App. 686.

(*j*) As to the grounds upon which production may be resisted, see note (*n*) to No. 1710 *ante*.

1734.
Appointment to inspect documents (*k*).

Formal parts: see ante No. 21.

Take notice that the plaintiff [*or as may be*] can inspect the documents mentioned in his notice dated the —— day of ——, 187—,

[*If the party giving the notice objects to produce any of his documents, say:*] except the documents mentioned in the schedule hereto (*l*),

at my office, situate at ——, on ——day next, the —— day of ——, 187—, between the hours of —— and —— o'clock.

The defendant C. D. [*or as may be*] objects to produce the documents mentioned in the schedule hereto on the ground that [*Here state the ground upon which the party objects to produce the documents* (*l*)].

1735.
Notice refusing inspection (*m*).

Formal parts: see ante No. 21.

Take notice that the defendant [*or as may be*] objects to give the plaintiff [*or as may be*] inspection of the documents mentioned in his notice dated the —— day of ——, 187—, on the ground that [*Here state the ground upon which the party objects to produce the documents* (*n*)].

(*k*) The party to whom a notice to produce his documents for the inspection of the opposite party has been given, under R. S. C. Ord. XXXI. 14, must, within the time mentioned above (note (*c*) to No. 1731 *ante*), deliver to the party giving such notice, a notice stating a time at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor; R. S. C. Ord. XXXI. 16. As to the consequences of not giving such notice, or not allowing the inspection, see *ante*, note (*a*) to No. 1728. For form of notice to inspect, see R. S. C. App. (B), No. 11. As to the persons who are entitled to inspect under this notice, and as to the practice on taking copies of or extracts from the documents produced, see note (*a*) to No. 1728 *ante*.

(*l*) The notice must state which, if any, of the documents in his possession the party objects to produce, and upon what grounds; R. S. C. Ord. XXXI. 16. As to the grounds upon which a party can validly resist production, see note (*n*) to No. 1710 *ante*, and note (*r*) to No. 1720 *ante*, and the authorities there cited.

(*m*) See R. S. C. App. (B), form 11, and (*k*) to No. 1734 *ante*.

(*n*) See note (*l*) to No. 1734 *ante*.

1736. Summons for order for production for inspection (*o*)

Formal parts: see ante No. 881.
on the part of the plaintiff [*or as may be: see ante* No. 1718] that

[*If so, add:*] notwithstanding the objection raised by the

(*o*) Any party may apply to a Judge for an order for the inspection of documents in the possession or power of the opposite party; R. S. C. Ord. XXXI. 17, 18; and in actions on policies of marine insurance, a party may apply for an order for the inspection of documents in the possession, custody, or power of persons not parties to the action; *West of England and South of Wales District Bank* v. *Canton Insurance Co.*, 2 Exch. D. 472. Notwithstanding a reference to a referee, the application should be made to the Judge, and not to the referee; *Rowcliffe* v. *Leigh*, 4 Ch. D. 661. An application for an order to inspect documents, referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit as to documents, need not be supported by any other evidence; R. S. C. Ord. XXXI. 18; provided it appear from the pleadings or affidavits that the documents, of which inspection is sought, are in the possession or power of the party against whom the application is made; Dan. Pr. 1686, 1687; in any other case, the application must be supported by an affidavit, showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party; R. S. C. Ord. XXXI. 18; for form of affidavit, see *post* No. 1737. A Judge has no discretionary power to refuse inspection by one party to the action, of documents, relating to the matters in question, in the possession or power of another party, except on the ground of privilege; the party has a right to such inspection where no privilege can be established; *Bustros* v. *White*, 1 Q. B. D. 423; and see *English* v. *Tottie*, 1 Q. B. D. 141, 144; for the grounds upon which production of documents may be resisted, see note (*n*) to No. 1710 *ante*, and note (*c*) to No. 1720 *ante*, and the authorities there cited. The party against whom the application is made, may also show in answer thereto, that the right to the inspection sought depends upon the determination of some issue or question in dispute in the action, or that, for any other reason, it is desirable that some issue or question in dispute in the action should be determined before deciding upon the right to the inspection, and the Court or Judge may then order such question or issue to be determined first, and may reserve the question as to the inspection; R. S. C. Ord. XXXI. 19; for the cases decided upon this rule, see note (*f*) to No. 1707 *ante*. A plaintiff will not in general be allowed inspection before he has delivered his statement of claim; *Cashin* v. *Craddock*, 2 Ch. D. 140; nor when a demurrer to the whole statement of claim has been delivered and is pending; Dan. Pr. 466, 1689; Seton, ed. 4, p. 156; and it is presumed that, by analogy to the old practice, a defendant will not, in general, be allowed inspection until he has put in his statement of defence; see Dan. Pr. 1676, and notes (*m*) and (*n*). Under the old practice, a defendant could not obtain inspection of documents in the possession of a co-defendant, before decree, but after decree he might; Dan. Pr. 1682, and notes (*a*) and (*b*); but it is apprehended that, under the new practice, where a defendant has set up a counterclaim against a co-defendant, either of such defendants may, before the trial, obtain inspection of documents in the possession of the other of them; see *ante*, note (*b*) to No. 1718. Where the party making the application is not entitled

defendant A. B. [*or as may be*] by his affidavit as to documents filed the —— day of ——, 187— [*Or*, by his notice given in this action and dated the —— day of ——, 187—], to produce the documents hereinafter mentioned (*p*),

the defendant A. B. [*or as may be; see ante* No. 1718] may be ordered at all seasonable times, upon reasonable notice, to produce at [*State where, as:*] the office of Mr. D., his solicitor, situate at ——, the several documents mentioned in the —— paragraphs of the said defendant's statement of defence [*or as may be*] in this action [*Or*, mentioned in the affidavit of the said defendant [*or as may be*] filed in this action on the —— day of ——, 187—, and in the first and second parts of the first schedule thereto], and thereby appearing to be in the possession or power of the said defendant [*Or*, mentioned in the affidavit of ——, filed in this action on the

to see some parts of the documents whereof he seeks inspection, by reason of such parts not relating to the matters in question, or on the ground of privilege, the opposite party should obtain leave to seal up such parts as, by affidavit, he shall swear do not relate to the matters in question, or are privileged; upon his application the order for inspection will be qualified in this manner; see form in Seton, ed. 4, 134, No. 3; if he neglects to have the order drawn up in this form, he must make an application for leave to seal up by summons; Dan. Pr. 1681, 1682; see *ante* Nos. 1732 and 1733. For form of order, see Seton, ed. 4, 136, No. 8. The order may be served upon the solicitor of the party against whom it is made, and such service will be sufficient service for the purpose of proceeding against the party for disobedience to the order; R. S. C. Ord. XXXI. 21; but if an application be made for an attachment for disobeying the order, the party against whom it is made, may show in answer that he has had no notice or knowledge of the order; *Ibid.;* if the solicitor upon whom the order is served neglects, without reasonable excuse, to give notice thereof to his client, he will himself be liable to an attachment; *Ibid.*, rule 22.

(*p*) Where any party has by his affidavit as to documents (see *ante* No. 1720, and note (*r*)), or by a notice under R. S. C. Ord. XXXI. 16 (see *ante* No. 1734 and note (*l*), and No. 1735 and note (*n*)) has claimed, on any ground, to protect from production documents relating to the matters in question, and the opposite party considers he is entitled to have such documents produced, the proper form of raising the question is by taking out a summons for their production notwithstanding the objection; Dan. Pr. 1679, 1680. If, in such a case, the ground alleged appears to be insufficient, but at the desire of both parties, and with a view of avoiding the delay and expense which must be occasioned by allowing the matter to stand over for the production of further facts, the judge himself looks into the documents, and decides whether they ought or ought not to be produced, it is not competent to either party afterwards to question the decision of the Judge in a Court of Appeal; *Bustros* v. *White*, 1 Q. B. D. 423, 427. For form of order directing production notwithstanding an objection, see *Dearl* v. *Hencheliff*, M. R. at Chambers, 21 Dec. 1866, Reg. Lib. A. 2780; *Finch* v. *Westrope*, M. R. at Chambers, 29 April, 1870, Reg. Lib. A. 1662; *Re Dewson*, M. R. at Chambers, 23 Nov. 1875, Reg. Lib. A. 20, 29; Seton, ed. 4, p. 136, No. 9; *Ibid.*, p. 139, No. 19.

—— day of ——, 187—, and in the schedule thereto, and thereby alleged to be in the possession or power of the said defendant [*or as may be*]. And that the applicant, his solicitors and agents,

[*If it is desired that the documents should be inspected by a special agent on behalf of the applicant, add:*] and also Mr. X. Y., of [*residence*], accountant [*or as may be* (*q*)],

may be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, as the applicant shall be advised, at his expense (*r*). And that the said defendant A. B. [*or as may be*] may be ordered to produce the same documents upon any examination of witnesses in this action, and at the trial thereof, as the applicant shall require (*s*). And that the costs of this application may be costs in the action [*Or*, And that the said defendant A. B. [*or as may be*] may be ordered to pay the costs of this application.]

1737.
Affidavit in support (*t*).

Formal parts: see ante No. 693.

1. This application is made on behalf of the plaintiff [*or as may be*] for the purpose of obtaining an order giving the said plaintiff liberty to inspect the documents mentioned in the schedule hereunder written.

2. All the said documents relate to the matters in question in this action, and are relevant to the questions to be decided at the hearing thereof.

3. All the said documents are in the possession or power of the defendant A. B. [*or as may be*].

4. [*Show means of knowledge.*]

Schedule above referred to.

(*q*) An order for production to a party, his solicitors, and agents, means only to the solicitors in the action, and persons professionally connected with them, or the general agents of the party, and does not compel production to an accountant or agent specially employed for the particular purpose of inspecting the documents; but, if necessary, an order will be made directing production to such a special agent; Dan. Pr. 1696, 1697, and notes (*q*) and (*r*). For form of order for production to a special agent, see Seton, ed. 4, p. 138, Nos. 15, 16.

(*r*) As to the mode of taking copies and extracts, and the expense thereof, see R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 16; and *ante*, note (*a*) to No. 1728. As to the costs of an inspection, see *Ibid.*, rule 15, and *ante*, note (*a*) to No. 1728.

(*s*) This part of the application is warranted by R. S. C. Ord. XXXI. 11, enabling the Court to deal with the documents in such manner as may appear just; see *ante*, note (*a*), at p. 919. For form of notice to produce, see *post* No. 1740.

(*t*) This affidavit is only necessary where it does not appear by the affidavits or pleadings of the party against whom the application is made, that the docu-

1738.

Summons for production for inspection, against two or more parties (*u*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be*], that the defendant A. B. as to the several documents mentioned in the 5th and 6th paragraphs of his statement of defence in this action [*or as may be ; see ante* No. 1736], and thereby appearing [*Or*, alleged] to be in his possession or power, and the defendant C. D. as to the several documents mentioned [*&c. ; as above*], and thereby appearing [*Or*, alleged] to be in his possession or power, may respectively be ordered, at all seasonable times, upon reasonable notice, to produce the said documents at the places following, that is to say : as to the said documents in the possession or power of the said defendant A. B. at [*State where*], and as to the said documents in the possession or power of the said defendant C. D. at [*State where*]. And that the applicant, his solicitors and agents, may be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom as the applicant shall be advised, at his expense. And that the said defendants A. B. and C. D. respectively may be ordered to produce the said documents respectively upon any examination of witnesses in this action and at the trial thereof, as the applicant shall require. And that the costs of this application may be costs in the action [*Or*, And that the said defendants A. B. and C. D. may be ordered to pay the costs of this application].

1739.

Summons for inspection by transferee of the interest or liability of a party who before the transfer had obtained an order to inspect (*v*).

Formal parts : see ante No. 881.

on the part of the plaintiff B., that he may be at liberty to have the same inspection of the documents mentioned or referred to in the order made in this action dated the —— day of ——, 187—, and the same power to take copies and abstracts thereof and extracts therefrom, as was given to the late plaintiff L., now a bankrupt, by the said order. And that the said plaintiff B., his

ments of which inspection is sought are in his possession or power ; R. S. C. Ord. XXXI. 18 ; and note (*o*) to No. 1736 *ante*. The affidavit must show, of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party ; R. S. C. Ord. XXXI. 18 ; for the purpose of showing that the party applying is entitled to inspect the documents, it is sufficient to show that they relate to the matters in question, and are relevant to some question to be determined at the hearing ; see Dan. Pr. 1637 ; see, also, note (*u*) to No. 1710, and note (*r*) to No. 1720 *ante*, and the authorities there cited.

(*u*) See No. 1736 *ante*, and the notes thereto. There is no objection to include in one summons, applications against several parties, though represented by separate solicitors ; Dan. Pr. 1677, note (*z*).

(*v*) See *Lindsay* v. *Gladstone*, V.-C. J. 25 Nov. 1869, Reg. Lib. B. 2833 ; and *Lindsay* v. *Gladstone*, V.-C. J. 21 Dec. 1869, Reg. Lib. B. 3137 ; Seton, ed. 4, p. 138, Nos. 15, 16.

solicitors and agents, may be at liberty, at all seasonable times, upon giving reasonable notice, to inspect the same documents, with the assistance of the said late plaintiff L. as his accountant (*w*). And that the costs of this application may be costs in the action.

1740.
Notice to produce documents at trial or on examination of witnesses (*x*).

Formal parts : see ante No. 21.

Take notice that you are hereby required, in pursuance of the order made in this action and dated the —— day of ——, 187—(*y*), to produce [*State where, as :*] before his lordship the Master of the Rolls [*or as may be*], at the trial of this action [*Or*, before ——, esquire, an examiner of this honourable Court, on ——day, the —— day of ——, 187—, at —— of the clock in the ——noon, upon an examination of witnesses in this action], the several documents mentioned or referred to in the said order dated the —— day of ——, 187—(*y*) [*Or*, the following documents mentioned or referred to in the said order dated the —— day of ——, 187—(*y*), that is to say : [*Here specify the documents required to be produced*]].

1741.
Summons for deposit of documents in Court, and for leave to inspect same (*z*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be ; see ante* No. 1718], that the defendant A. B. [*or as may be ; see ante* No. 1718] may

(*w*) See note (*q*) to No. 1736 *ante*.

(*x*) See *ante* No. 1736 and note (*s*) thereto.

(*y*) Order to produce.

(*z*) The Court may deal with documents relating to the matters in question in the action which are in the possession or power of any party to the action in such manner as appears just ; R. S. C. Ord. XXXI. 11. The Court of Chancery had formerly a similar power ; 15 & 16 Vict. c. 86, ss. 18, 20 ; but the practice in that Court was to order inspection simply of the documents, without removing them from the possession of the party in whose possession it found them, unless some special ground were shown by the opposite party for ordering the documents to be deposited in Court ; Dan. Pr. 1696 ; the Rules of the Supreme Court (see Ord. XXXI. rules 14, 16, 18) seem to show that, as a general rule, inspection of documents will take place without altering their custody ; it would appear, therefore, that an application to have documents deposited in Court should be supported by an affidavit showing some necessity or reason for securing the safe custody of the documents in that manner. The application should, notwithstanding a reference to a Referee, be made to the Judge ; *Rowcliffe* v. *Leigh*, 4 Ch. D. 661. For the different grounds upon which the application for leave to inspect the documents may be resisted, see *ante* No. 1736, note (*o*). As to the time at which the application may be made, see *ante* No. 1736, note (*o*). As to obtaining leave to seal up any parts of the documents deposited, see *ante* No. 1736, note (*o*), and Nos.

be ordered, within —— days after service of the order to be made upon this application (*a*), to produce to and leave with the Clerk of Records and Writs (*b*) [*Or*, with the Registrar of the District Registry at —— (*b*)], the several documents mentioned in the —— paragraphs of the said defendant's statement of defence [*or as may be*] in this action [*Or*, mentioned in the affidavit of the said defendant [*or as may be*], filed in this action on the —— day of ——, 187—, and in the first and second parts of the first schedule thereto [*or as may be*]], and thereby appearing to be in the possession or power of the said defendant [*or as may be*]. And that the applicant, his solicitors and agents, may be at liberty to inspect and peruse the documents so produced and left, and to take copies and abstracts thereof and extracts therefrom, as the applicant shall be advised, at his expense (*c*). And that the said

1732, 1733. There is no objection to include in one summons applications against several parties though represented by separate solicitors; Dan. Pr. 1677, note (*z*); for form of application in such a case, see *ante* No. 1738. For forms of order, see Seton, ed. 4, p. 133, No. 2; p. 135, No. 5; p. 140, Nos. 20, 21.

(*a*) Service of the order on the solicitor of the party against whom it is made, will be sufficient service for the purpose of proceeding against the party for disobedience to the order; R. S. C. Ord. XXXI. 21; but if an application for an attachment be made against the party for disobeying the order, he may show in answer that he has had no notice or knowledge of the order; *Ibid.*; if the solicitor upon whom the order is served neglects to give notice thereof to his client he will himself be liable to an attachment; *Ibid.*, rule 22.

(*b*) When any documents are ordered to be left or deposited, they must be ordered to be left or deposited with the Record and Writ Clerk; Cons. Ord. XLII. 3; but by the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 66, documents may be ordered to be produced in the office of a district registrar; and in *Groves* v. *Groves*, V.-C. W. 13th Dec. 1853, Reg. Lib. A. 585; Kay, App. xix., documents were ordered to be produced to and left with a Chief Clerk. On depositing the documents, the original order should, if possible, be produced; and, in every case, a copy of the order and a schedule of the documents must be left at the time the deposit is made. The documents must be made up in a parcel, or enclosed in a wooden or tin box; and the short title of the action, and the name and address of the solicitor or party making the deposit, must be written on the parcel or box. Strong brown or cartridge paper should be used for the parcel. Where the parcel would exceed about twelve inches in length and width, and ten in depth, or fifteen in length, twelve in width, and six in depth, a box will, in general, be required. The box must have a lock and key; and the key should have a parchment label: with the short title of the action, and the name of the solicitor or party written thereon; Dan. Pr. 1698, and note (*b*). The documents, when deposited, are subject to such directions as may be given for the production thereof; Cons. Ord. XLII. 3.

(*c*) Inspection of documents deposited under an order will be refused, as well to the parties depositing the documents, as to a plaintiff or defendant: unless he is suing in person, or is introduced by his solicitor. Where liberty to inspect is given in the ordinary form, the party entitled to inspect may do

documents may be produced by the Clerk of Records and Writs [*Or*, by the Registrar of the District Registry at ——], upon any examination of witnesses in this action and at the trial thereof as the applicant shall require (*d*). And that the costs of this application may be costs in the action.

1742. Summons to extend time for making deposit (*cc*).

Formal parts: see ante No. 881.

on the part of the defendant A. B. [*or as may be*], that the time limited by the order dated the —— day of ——, 187—, for the applicant to deposit documents in Court may be (further) enlarged to the —— day of ——, 187—. And that the costs of this application may be costs in the action (*dd*).

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so in the absence of the party depositing the documents; where, therefore, it is desired that this practice should be modified, the order should be qualified accordingly. A defendant is not allowed to inspect documents deposited by a co-defendant, unless expressly authorised so to do by order: or the inspection is sanctioned by such co-defendant, or by the plaintiff; Dan. Pr. 1698. As to the meaning of the term "agents" see *ante*, note (*q*) to No. 1736; where it is desired that a special agent of the applicant should inspect the documents, the application should be framed accordingly; see *ante* No. 1736; and see Seton, p. 140, No. 20. For form of *præcipe* to inspect the documents deposited, see *post* No. 1743. The party inspecting may make copies of or extracts from the documents without payment of any fee; Dan. Pr. 1698. As to the costs of an inspection, see R. S. C. (Costs), Sched. "Special allowances and general provisions," r. 15; *ante*, note (*a*) to No. 1728.

(*d*) If documents deposited in Court are afterwards required to be produced upon any examination of witnesses in the action or at the trial thereof, the officer will, if the order be drawn up in this form, attend with them on request, on a memorandum bespeaking his attendance being left with him, and on payment of his fee; for form of memorandum see No. 1744 *post*; if production be sought on any other occasion, a further order must be obtained for the officer to attend. This order may be obtained on motion of course, or on petition of course, supported by an affidavit that the production of the document is necessary for the purposes of evidence; see *post* Nos. 1745 to 1748. In the absence of special circumstances, documents deposited in Court will not be allowed to be taken out of the jurisdiction of the Court; *Lafone* v. *Falkland Islands Co.*, 4 K. & J. 39.

(*cc*) The time allowed by the Order may be enlarged by the Court or a Judge, and that notwithstanding the previous expiration of the time allowed; R. S. C. Ord. LVII. 6.

(*dd*) See note (*d*) to No. 402 *ante*.

1743.
Memorandum on inspecting documents (*e*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

For inspecting documents.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party inspecting; as in* No. 92 *ante.*]

1744.
Memorandum bespeaking attendance of officer, on examination of witnesses or at trial, with documents deposited (*f*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

For attendance with [*Describe the documents; as thus:*] all the documents deposited by the defendant A. B., pursuant to the order dated the —— day of ——, 187—, at the Court of his lordship the Master of the Rolls [*or as may be*], on ——day, the —— day of ——, 187—, at —— of the clock in the ——noon, on the trial of this action [*Or*, on an examination of witnesses in this action].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party bespeaking the attendance; as in* No. 92 *ante.*]

(*e*) As to inspection of the deposited documents and taking copies thereof, see note (*c*) to No. 1741 *ante*. On inspection a fee is payable of 2*s*. 6*d*. for each hour, or part of an hour, occupied, not exceeding on one day 10*s*.; Ord. as to Court Fees, Oct., 1875, Sched.; Wilson, 506; this fee is payable by means of stamps impressed upon the memorandum; Ord. as to Fees, April, 1876, Sched; Wilson, 522.

(*f*) As to the production of the deposited documents, see note (*d*) to No. 1741 *ante*. On bespeaking the attendance of the officer a fee is payable (in addition to the reasonable expenses of the officer) of, for each day or part of a day that he is necessarily absent from his office, £1; and the officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses, which may probably become payable, beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit must make a note thereof on the memorandum bespeaking his attendance; the officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited; Ord. as to Court Fees, Oct., 1875, Sched.; Wilson, 506; the fee for the first day's attendance is to be denoted by a stamp either impressed upon or adhesive to the memorandum, and if the officer's attendance be required beyond one day, the additional fee per diem, after the first day, is to be taken by means of a *præcipe* with the

1745.
Motion paper for production of documents deposited (*g*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff [*or as may be*], that the proper officer may be directed to attend [*State where, when, and on what proceeding; as thus:*] the Sittings in London of this Court at the Guildhall, in the City of London, on the —— day of ——, 187—, at —— of the clock in the ——noon, and so on from day to day until the action, "Brown *v.* Jones," shall have been tried, and then and there to produce the following documents, that is to say: [*Describe the documents to be produced; as thus:*] two indentures dated respectively the —— day of ——, 187—, and the —— day of ——, 187—, deposited in Court by the defendant —— [*or as may be*], pursuant to an order dated the —— day of ——, 187—.

An affidavit in support accompanies.

1746.
Petition of course for the like (*g*).

Formal parts: see ante No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

[*Show the necessity for the production of the original documents; as thus:*]

1. An action "Brown *v.* Jones," has been brought by your petitioner in the Exchequer Division of this honourable Court against H. J.; and such action has been entered for trial at the present Trinity Sittings in London of this Court.

2. Your petitioner is advised that it is material and necessary for his case that he should produce to the Court and jury on the trial of the said action the several documents hereinafter men-

stamp impressed thereon, filed in the department from which the officer is summoned; Ord. as to Fees, April, 1876, Sched.; Wilson, 522. Where a deposit is required, the following regulations are to be observed:—(*a*) The party or his solicitor from whom the deposit is required must present for the signature of the officer requiring the same, a certificate duly stamped for the amount of the deposit. Forms of certificate may be obtained at the Inland Revenue Office, Somerset House, and at other places appointed by the Commissioners of Inland Revenue. (*b*) When the fees and expenses are ascertained, the officer by whom the deposit was required must endorse upon the certificate the amount so ascertained. (*c*) If the amount is in excess of the deposit, the certificate bearing an additional stamp equal to the excess must be produced to the officer. (*d*) If the amount of the fees and expenses is less than that of the deposit the holder of the certificate may obtain repayment of the difference upon presenting the certificate endorsed as above mentioned at the Inland Revenue Office, Somerset House; Ord. as to Fees, April, 1876; Wilson, 522.

(*g*) See note (*d*) to No. 1741 *ante*. For forms of order, see *The English Joint Stock Bank, Limited*, M. R. 2 July, 1870, Rolls. Lib.; *Wilkes* v. *Guardians of the Poor of Dudley Union*, M. R. 19 July, 1870, Rolls Lib.; *Bell* v. *Smith*, M. R. 3 Dec., 1869, Rolls. Lib.

tioned; and that certified or examined copies of the said documents will be insufficient for the purpose.

Your petitioner therefore humbly prays, that the proper officer may be directed to attend [*Continue as in* No. 1745 *ante, to end*].

And your petitioner will ever pray, &c.

1747.

Affidavit in support (*h*).

Formal parts: see ante No. 693.

1. [*Show the necessity for the production of the original documents; see the statements in* No. 1746 *ante.*]

2. [*Show means of knowledge.*]

1748.

Memorandum bespeaking attendance (*j*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

B. *v.* D.

For attendance with [*Describe the documents; see* No. 1745 *ante*] at [*State where and when; as:*] the Sittings in London of this Court at the Guildhall, in the City of London, on the —— day of ——, 187—, at —— of the clock in the ——noon, on the trial of the action "Brown *v.* Jones."

Dated —— day of ——, 187—.

[*Name and address of solicitor or party bespeaking attendance; as in* No. 92 *ante.*]

1749.

Notice of motion or summons for the delivery out of documents deposited in Court, under an order (*k*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that [*Describe what; as thus:*] all the documents

Or, the documents mentioned in the schedule hereto,

deposited by him with the Record and Writ Clerk [*or as may be*], pursuant to the order dated the —— day of ——, 187—, may be delivered out to the applicant.

(*h*) See note (*d*) to No. 1741 *ante.*

(*j*) See note (*d*) to No. 1741 *ante.* As to the fees and expenses payable upon attendance, see note (*f*) to No. 1744 *ante.*

(*k*) See Dan. Pr. 1699. For order in like case, see *Jones* v. *Garrad*, V.-C. S. at Chambers, 13 Feb., 1864, Reg. Lib. A. 253 (by consent); and see Seton, ed. 4, p. 168, No. 1.

1750. Petition of course for the like: by consent (*l*).

Formal parts: see ante No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Pursuant to an order dated the —— day of ——, 187—, made in this action on the application of the defendant A. B. [*or as may be*], certain documents specified in the first schedule to an affidavit of your petitioner filed the —— day of ——, 187— [*or as may be*], were deposited by him with the Clerk of the Records and Writs [*or as may be*].

2. The purpose for which the said documents were so deposited being now satisfied, your petitioner is desirous to have the said documents delivered out to him.

Your petitioner therefore humbly prays that, by consent (*m*) of the defendant A. B. [*or as may be*], all the documents deposited by your petitioner as aforesaid may be delivered out to him.

And your petitioner will ever pray, *&c.*

1751. Receipt, on delivery out of deposited documents (*n*).

Received the documents [*or as they may be described in the order*] mentioned or referred to in the above order.

Dated this —— day of ——, 187—.

[*Signature of the party to whom the documents are ordered to be delivered.*]

Witness to the signature of the said A. B.
C. D., of [*residence and addition*].

(*l*) See Dan. Pr. 1699.

(*m*) For form of consent, see *ante* No. 1577.

(*n*) See Dan. Pr. 1699. A copy of the order for delivery out: or of so much thereof as directs such delivery: with a receipt signed by the person to whom the delivery out is directed to be made, and witnessed: must be left, and the original order must be produced, at the Record and Writ Clerk's office, at the time the original application for the delivery is made. It is not necessary that the party to whom the documents are ordered to be delivered should personally attend at the Record and Writ Clerk's office to receive them; nor is a power of attorney necessary to authorise another person to receive them on his behalf. If the documents to be delivered out comprise part only of the documents deposited in the action, then the documents to be delivered out must be selected by the solicitor, and compared by the Record and Writ Clerk with the order directing the delivery, and afterwards handed to the person applying for them. In such case, the Record and Writ Clerk will retain the box or parcel containing the rest of the documents in the action, and place therein the copy order, and receipt; and will make an entry in the "Exhibit Book" that the other documents have been delivered out: Dan. Pr. 1699.

1752.
Summons to dismiss action for non-compliance of plaintiff with order to produce (*o*).

Formal parts: see ante No. 881.

on the part of the defendant, that, the plaintiff having failed to comply with the order made in this action dated the —— day of ——, 187—, to produce documents for the inspection of the defendant, his solicitors and agents [*Or*, to deposit documents in Court for the inspection of the defendant, his solicitors and agents], this action may be dismissed

[*If there are other defendants than the applicant, add:*] as against the said defendant

for want of prosecution, with costs to be paid by the said plaintiff to the said defendant.

1753.
Summons to strike out defence for non-compliance of defendant with order to produce (*o*).

Formal parts: see ante No. 881.

on the part of the plaintiff that, the defendant having failed to comply with the order made in this action dated the —— day of ——, 187—, to produce documents for the inspection of the plaintiff, his solicitors and agents [*Or*, to deposit documents in Court for the inspection of the plaintiff, his solicitors and agents], the statement of defence delivered by the said defendant on the —— day of ——, 187—, may be struck out, and that the said defendant may be placed in the same position as if he had not defended this action. And that the said defendant may be ordered to pay the costs of this application.

1754.
Proceedings to attach a party for non-compliance with order (*p*).

[*Same as* Nos. 1375 *to* 1379 *ante.*]

(*o*) If any party fails to comply with an order for the production of documents for the inspection of another party, he will, if a plaintiff, be liable to have his action dismissed for want of prosecution, or, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the opposite party may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly; R. S. C. Ord. XXXI. 20; for the decisions upon this rule, see note (*r*) to No. 1715 *ante*. The application should be by summons at Chambers, and not by motion; see *Chesterfield Colliery Co.* v. *Black*, 24 W. R. 783; *Frewson* v. *Lee*, 26 W. R. 138. An application under this rule cannot be made for non-compliance with a notice under R. S. C. Ord. XXXI. 14, to produce documents for the inspection of the party giving the notice; an order to produce must first be obtained; R. S. C. Ord. XXXI. 20.

(*p*) If any party fails to comply with an order for the production of documents for the inspection of another party, he will be liable to attachment; R. S. C. Ord. XXXI. 20. As to attachment, see R. S. C. Ord. XLII. and Ord. XLIV., and *ante* Nos. 1375—1392. But a party is not liable to attachment for non-compliance with a notice under R. S. C. Ord. XXXI. 14, to produce documents for the inspection of the party giving the notice: an order to produce must first be obtained; R. S. C. Ord. XXXI. 20.

Section III.—Discovery by Inspection of Property (*a*).

1755. Notice of motion or summons for liberty to inspect subject-matter of action, and to take samples thereof (*b*).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the plaintiff [*or as may be*], that the plaintiff, his solicitors and agents (*c*), and also three persons to be named by the plaintiff, may be at liberty, at all seasonable times, upon giving to the defendant's solicitor twenty-four hours' previous notice in writing, to inspect the grain [*or as may be*], the subject-matter of this action, and to take samples thereof. And that the defendant [*or as may be*] may be ordered to permit the said plaintiff, his solicitors and agents, and the three persons to be named by him as aforesaid, to inspect the said grain [*or as may be*], and to take samples thereof. And that the costs of this application may be costs in the action.

1756. Notice of motion or summons for liberty to inspect defendant's premises, and to take drawings, &c., in a light and air case (*d*).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the plaintiff [*or as may be*], that the plaintiff, his solicitors and agents (*e*), and also three surveyors to be named by the plaintiff, may be at liberty, at all seasonable times, upon giving twenty-four hours' previous notice in writing to the defendant's solicitor, to enter upon the defendant's premises in the statement of claim in this action mentioned, and to inspect such

(*a*) The Court or Judge may, upon the application of any party to an action, and upon such terms as may seem just, make any order for the inspection of any property, being the subject of such action, and for that purpose may authorise any person or persons to enter upon or into any land or building in the possession of any party to such action, and may authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence; R. S. C. Ord. LII. 3. The Court of Chancery exercised a similar jurisdiction; *Whaley* v. *Bracker*, 12 W. R. 595; *Singer Manufacturing Co.* v. *Wilson*, 13 W. R. 560; *Patent Type Founding Co.* v. *Walter*, Johns. 727; *Neilson* v. *Betts*, L. R. 5 H. L. (Eng. and Ir. App. Cas.) 1, 11, 12; *Flower* v. *Lloyd*, W. N. (1876) 169, 231. The Court will not grant an inspection on the application of the plaintiff, unless satisfied that he has a case to be tried at the hearing of the action; nor in any case unless the inspection asked for is necessary for the purpose of enabling the party applying for it to prove his case; *Piggott* v. *Anglo-American Telegraph Co.*, 19 L. T. (N. S.) 46; *Batley* v. *Kynock*, L. R. 19 Eq. 90; upon this principle, in a nuisance action, an application to inspect the defendant's works to ascertain how the nuisance was occasioned was refused, as proof of the nuisance could be obtained from external sources; *Barlow* v. *Bailey*, 18 W. R. 783.

(*b*) See note (*a*), *supra*.

(*c*) As to the meaning of these words, see note (*q*) to No. 1736 *ante*.

(*d*) See note (*a*), *supra*.

(*e*) As to the meaning of these words, see note (*q*) to No. 1736 *ante*.

parts of the said premises as are opposite to, and against, and in the neighbourhood of, the windows in the plaintiff's premises in the —— paragraph of the statement of claim mentioned, and to make and take maps, plans, drawings, models, photographs, measurements, and observations thereof; and also, when upon the said defendant's premises, to make and take maps, plans, drawings, models, photographs, measurements, and observations of the plaintiff's premises in the statement of claim mentioned. And that the defendant [*or as may be*] may be ordered to permit the plaintiff, his solicitors and agents, and the persons to be named by the plaintiff as aforesaid, to enter and be upon the premises of the said defendant for all the purposes aforesaid. And that the costs of this application may be costs in the action.

1757.
Notice of motion or summons for leave to inspect underground workings (*e*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that the plaintiff, his solicitors and agents (*f*), and also a surveyor to be appointed by the plaintiff, may be at liberty at all seasonable times, upon giving twenty-four hours' notice, to enter into, inspect, and examine the mines occupied by the defendants, and to inspect and examine the mining operations and workings carried on therein, and the working plans connected therewith, so far as may be necessary to ascertain whether the defendants have worked into the plaintiff's land, and how far and to what extent, and to measure, dial, and make all such plans and surveys as may be necessary for that purpose; and that the defendant [*or as may be*] may be ordered to permit the plaintiff, his solicitors and agents, and the surveyor to be appointed as aforesaid, to enter into the said mines for the purposes aforesaid, and to permit them to use the said defendant's machinery for the purpose of descending and ascending, and to give all other reasonable facilities for the purpose of the said inspection. And that the costs of this application may be costs in the action.

(*e*) Upon a *primâ facie* case of mineral trespass or encroachment by the defendant, and where the fact of trespass (which is denied) can only be ascertained by inspection, and no injury will result to the defendant therefrom, an interlocutory order will be made for the inspection of his mine; and the order will, when necessary, extend to the removal of obstructions to the inspection; Seton, ed. 4, 208, and cases there cited; R. S. C. Ord. LII. 3; *supra*, note (*a*) at p. 943; *Cooper* v. *Ince Hall Co.*, W. N. (1876), 24. For forms of order, see *E. of Lonsdale* v. *Curwen*, L. C. 7 June, 1799, Reg. Lib. A. 399; *A.-G.* v. *Chambers*, V.-C. W., 18 July, 1849, Reg. Lib. A. 1948; *Baynton* v. *Leonard*, M. R., 15 Feb. 1853, Reg. Lib. A. 454; *Bennitt* v. *Whitehouse*, M. R., 9 Feb. 1860, Reg. Lib. A. 232; *Wall* v. *Dunn*, V.-C. M., 2 Mar. 1876, Reg. Lib. 693; *Cooper* v. *Ince Hall Co.*, W. N. (1876) 24; Seton, ed. 4, p. 202, No. 2; 203, No. 4; 204, No. 5.

(*f*) As to the meaning of these words, see note (*q*) to No. 1736 *ante*.

1758. Notice of motion or summons for liberty to inspect property in action of waste (*g*).

Formal parts : see ante No. 1571, *or* No. 881.
on the part of the plaintiff [*or as may be*], that the plaintiff, his solicitors and agents (*h*), and also two surveyors to be nominated by the plaintiff, may be at liberty, at all seasonable times, upon giving twenty-four hours' previous notice in writing to the defendant's solicitor, to enter into and upon the mansion-house, pleasure-grounds, and all other the premises comprised in and settled by the indenture [*Or*, the will], dated the —— day of ——, 18—, mentioned in the —— paragraph of the statement of claim in this action, for the purpose of ascertaining what waste, spoil, or destruction has been committed in or upon the said mansion-house and premises ; and that the said defendant [*or as may be*] may be ordered to permit the said plaintiff, his solicitors and agents, and two surveyors to be nominated as aforesaid, to enter into and upon the said premises for the purposes aforesaid. And that the costs of this application may be costs in the action.

1759. Notice of motion or summons to inspect defendants' process, and take samples, in action for infringement of letters patent (*j*).

Formal parts : see ante No. 1571, *or* No. 881.
on the part of the plaintiff [*or as may be*], that the plaintiff, his solicitors and agents (*k*), and also two scientific witnesses to be named in the notice hereinafter mentioned, may be at liberty, at all seasonable times, and as often as may be requisite, upon giving three days' previous notice in writing to the defendants' solicitors, to enter into and upon the business premises of the defendants, where the process of decorating or printing tin and metal plates is carried on by the defendants, as stated in the plaintiff's statement of claim in this action ; and to inspect and examine there the whole of the process by which such printed and decorated tin and metal plates are manufactured by the defendants, and to take, on paying the reasonable charges of the defendants for the same, samples of such plates, and upon and during such inspection, to make such observations as may be necessary and expedient for the purpose of obtaining full information and evidence of the

(*g*) See R. S. C. Ord. LII. 3, and note (*a*) at p. 943 *ante*.

(*h*) As to the meaning of these words, see note (*q*) to No. 1736 *ante*.

(*j*) See the Patent Law Amendment Act, 1852 (15 & 16 Vict. c. 83), s. 42 ; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 76 ; R. S. C. Ord. LII. 3 ; and note (*a*) at p. 943 *ante*. The rule in actions for the infringement of letters patent is, that where a plaintiff is unable to obtain clear and satisfactory evidence of infringement, the Court, upon a fair *primâ facie* case being made out, will order defendant to permit an inspection to be made of his premises and machinery, by proper persons named on behalf of the plaintiff ; Seton, ed. 4, 351, and cases there cited. For forms of order, see *Henderson* v. *Rancorn, &c., Co.*, V.-C. W., 19 Dec. 1867, Reg. Lib. A. 3050 ; *Flower* v. *Lloyd*, C. A., 5 July, 1876, Reg. Lib. A. 1254 ; Seton, ed. 4, 350, No. 11.

(*k*) As to the meaning of these words, see note (*q*) to No. 1736 *ante*.

mode by which such plates are manufactured by the defendants; and that the defendants may be ordered to permit the plaintiff, his solicitors and agents, and two persons to be named as aforesaid, to enter into and upon their said premises for the purposes aforesaid. And that the costs of this application may be costs in the action.

1760.
Notice of motion or summons to inspect defendants' machines and manufacturing process, and to take samples, in action for infringement of letters patent (*l*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff, that the plaintiff, his solicitors and agents (*m*), and also three scientific witnesses to be named in the notice hereinafter mentioned, may be at liberty, at all seasonable times, and as often as may be requisite, upon giving three days' previous notice in writing to the defendants' solicitors, to enter into and upon the business premises of the defendants, where the manufacture of chenille is carried on by the defendants, as mentioned in the statement of claim in this action, and to inspect and examine there the machines used by the said defendants in the manufacture of chenille, and the process by which chenille is manufactured by the said defendants, and that the said machines may be put to work upon such inspection; and that the plaintiff may be at liberty to take samples of the chenille made or to be made upon the said machines; and that the said defendants may be ordered to permit the said plaintiff, his solicitors and agents, and also three persons to be named as aforesaid, to enter into and upon their said premises for the purposes aforesaid. And that the costs of this application may be costs in the action.

1761.
Notice of motion or summons to inspect defendant's machines, in action for infringement of letters patent (*n*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff, that the defendant may be ordered, within seven days after service of the order to be made upon this application, to make and file an affidavit verifying the several kinds of sewing machines sold or exposed for sale by him since the —— day of ——, 187— [*Date of letters patent*]. And that the said defendant may be ordered, within seven days after filing such affidavit, to produce at the office of Mr. C. D., his solicitor, situate at [*State where*], one of each of the several different kinds of sewing machines, which by such affidavit shall appear to have been sold or exposed for sale by him since the said —— day of ——, 187—; and that the plaintiff, his solicitors and

(*l*) See note (*j*) to No. 1759 *ante*. For form of order, see *Davenport* v. *Jepson*, V.-C. W., 20 Dec. 1862, Reg. Lib. A. 2399.

(*m*) As to the meaning of these words, see note (*q*) to No. 1736 *ante*.

(*n*) See note (*j*) to No. 1759 *ante*. For form of order, see *Singer Manufacturing Co.* v. *Wilson*, V.-C. W., 23 Mar. 1865, Reg. Lib. B. 900.

agents (*p*), and also three scientific witnesses to be named in the notice hereinafter mentioned, may be at liberty, at all seasonable times, and as often as may be requisite, upon giving three days' previous notice in writing to the defendant's solicitors, to inspect the said machines and to work the same. And that the said defendant may be ordered to produce the said machines upon any examination of witnesses in this action, and at the trial thereof as the plaintiff may require. And that the costs of this application may be costs in the action.

1762. Notice of motion or summons to inspect type used by defendant, and for delivery of samples, in action for infringement of letters patent (*q*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff, that the plaintiff, his solicitors and agents (*r*), and also one scientific witness to be named in the notice hereinafter mentioned, may be at liberty, upon giving three days' previous notice in writing to the defendant's solicitors, to enter upon the defendant's premises, and to inspect the type there used by the said defendants in their printing processes as mentioned in the statement of claim in this action; and that the defendant may be ordered to permit the plaintiff, his solicitors and agents, and one person to be named as aforesaid, to enter upon his premises for the purpose aforesaid. And that the said defendant may further be ordered to deliver to the plaintiff a competent part of the said type so used, on payment of a fair price for the same. And that the costs of this application may be costs in the action.

(*p*) As to the meaning of these words, see *ante*, note (*q*) to No. 1736.

(*q*) See note (*j*) to No. 1759 *ante*; and *Patent Type Founding Co.* v. *Walter*, Johns. 727.

(*r*) As to the meaning of these words, see note (*q*) to No. 1736 *ante*.

CHAPTER XXVII.

CONSOLIDATION.

1763. Notice of motion or summons to consolidate actions brought against same defendant, in respect of causes of action which might have been joined in the same action (*a*).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the defendant in each of the above-mentioned actions, that these actions may be consolidated and proceed as one action. And that the plaintiff may be ordered to pay to the defendant his costs of this application, to be taxed.

1764. Notice of motion or summons to consolidate actions brought against different defendants on one contract (*b*).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the defendants in all the above-mentioned actions.

(*a*) Actions may be consolidated by the Court or a Judge, in the manner formerly in use in the superior Courts of common law; R. S. C. Ord. LI. 4. This order adopts the old practice at common law; *Amos* v. *Chadwick*, 4 Ch. D. 869. The old practice at common law was, that if two or more actions were brought by the same plaintiff at the same time against the same defendant, for causes of action which might have been joined in the same action, the Court or a Judge, if they deemed the proceedings vexatious or oppressive, would, in general, compel the plaintiff to consolidate them, and to pay the costs of the application; Chitty's Arch. 1357, and cases cited in notes (*c*) and (*d*). As to what causes of action may be joined in the same action, see R. S. C. Ord. XVII., and *ante*, note (*z*) at p. 118. The application may be made immediately after appearance; Chitty's Arch. 1360. The application should be entitled in all the actions; *Ibid.* Where the actions have been assigned to different divisions of the Court, or to different Judges of the Chancery Division, there must, before the application to consolidate is made, be a transfer of all the actions to the same division, or the same Judge of the division, and the application to consolidate is then made to the division to which, or to the Judge to whom, all the actions are attached; see Dan. Pr. 700; *Evans* v. *Debenham*, 24 W. R. 900; *Holmes* v. *Harvey*, 25 W. R. 80; *Carmarthenshire Coal Co.* v. *Jones*, 12 Feb. 1876, Seton, ed. 4, 324. For forms of application to transfer, see *post* Nos. 1851—1858.

(*b*) See note (*a*) to No. 1763 *ante*. A plaintiff may, at his option, join as

that these actions may be consolidated and proceed as one action. And that the plaintiff may be ordered to pay to the defendants their costs of this application to be taxed.

1765. Notice of motion or summons to consolidate several actions for administration, where no judgment has been made (c).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of C. D., the defendant in each of the above-mentioned actions [*Or*, of A. B., the plaintiff in the first [*Or*, second] above-mentioned action], that the above-mentioned actions may be consolidated, and may henceforth be carried on as if they were one action; and that all necessary and proper directions may be given as to the persons who shall be plaintiffs, and as to the persons who shall be defendants in such one action, and as to the conduct and carriage of such one action, and that the costs of all parties of all the above-mentioned actions, including their costs of this application, may be costs in such one action.

1766. Notice of motion or summons to stay proceedings in administration action, where judgment has been made in another action (c).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of C. D., the defendant in each of the above-mentioned actions [*Or*, of E. F., the plaintiff in the first above-mentioned action]:

1. That all proceedings in the second-mentioned action may be stayed.

2. That the costs of the plaintiff A. B., of the said second-

parties to the same action, all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes; R. S. C. Ord. XVI. 5.

(c) Where several actions are brought for the administration of the estate of the same deceased, if no judgment for administration has been made, an application should be made to consolidate the actions; but if a general judgment for administration has been made in one action, the application should be to stay proceedings in all the other actions. For forms of order consolidating several administration actions, see *Re Read*, *Johnson* v. *Read*, and *Birch* v. *Read*, M. R. at Chambers, 16 Jan. 1877; *Re Wortley*, *Culley* v. *Wortley*, and *Harward* v. *Storey*, M. R. at Chambers, 25 April, 1876; *Nothard* v. *Proctor*, and *Blewitt* v. *Proctor*, V.-C. B., 16 Nov. 1875, Reg. Lib. B. 2872. As to staying proceedings in one administration action where a judgment has been made in another, see *Re Smith*, 33 L. T. 804; *Matthews* v. *Matthews*, 34 L. T. 718; Dan. Pr. 698—700; for forms of order, see Seton, ed. 4, p. 322. Where the subsequent action claims relief, beyond that for which judgment has been given in the first action, such subsequent action will not be stayed completely, but only so far as it claims the relief included in the former action; *Re Aird*, *Morton* v. *Quick*, 26 W. R. 441. The application, whether to consolidate or to stay proceedings, should be entitled in all the actions. The application should be made by the personal representative immediately upon appearance in the second action; but if he neglects to do so, the plaintiff in the first action, though not a party to the second, may make the application; see Dan. Pr. 699.

mentioned action, up to the time when he had notice of the judgment entered in the first-mentioned action on the —— day of ——, 187—, including his costs of this application, may be taxed.

3. [*If assets admitted:*] That such costs, when so taxed, may be paid to the said A. B. by the said defendant C. D. out of the assets of G. H., the testator in the pleadings in the first-mentioned action named, and that the said A. B. may be at liberty to go in under the said judgment and prove his claim against the ass ts of the said G. H., deceased.

[*Or, if assets denied:*] That the said A. B. may be at liberty to add his costs to his claim against the assets of the said G. H., and to go in and prove the same, and the amount of his said costs when taxed, under the said judgment entered on the —— day of ——.

4. That the costs of the defendant C. D., of the said second-mentioned action and of this application, may be costs in the said first-mentioned action.

1767.

Another form, for like purpose (*c*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant C. D., that all proceedings in this action may be stayed, and that the costs of the plaintiff of this action, up to and including this application, may be taxed, and that the said costs, when so taxed, may be paid to the said plaintiff by the defendant C. D. out of the assets of G. H., deceased, in a due course of administration; and that the plaintiff may be at liberty to go in under the judgment entered on the —— day of ——, 187—, made in an action between E. F., on behalf of himself and all other the creditors of G. H., deceased, plaintiff, and the said C. D., defendant, 187—, F. No. , and prove his claim against the assets of the said G. H., deceased, and that the costs of the said C. D. may be costs in the said action.

(*c*) See note (*c*) to No. 1766 *ante*.

1768.
Notice of motion or summons to stay proceedings, where several actions brought raising the same question (*d*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the defendants in all the above-mentioned actions, that all further proceedings in the above-mentioned actions of A. *v.* C., A. *v.* D., and A. *v.* E., may be stayed until after judgment has been entered in the first-mentioned action of A. *v.* B., the defendants in the said actions of A. *v.* C., A. *v.* D., and A. *v.* E., submitting to be bound and concluded by the judgment in the said action of A. *v.* B.

1768 a.
Summons by plaintiffs in several actions raising the same question, that one may proceed as a test action, and to enlarge the time for pleading in the others (*e*).

Formal parts: see ante No. 881.
on the part of the plaintiffs in all the above mentioned actions respectively, that: the plaintiffs in all the above mentioned actions respectively, other than the action of A. *v.* B., undertaking that the said action of A. *v.* B. shall be treated as a test action, and shall decide their rights in all the said other actions respectively as against themselves; and the plaintiff in the said action of A. *v.* B. undertaking that the said action shall be prosecuted with due diligence: the time for the delivery of the statement of claim in all the above-mentioned actions respectively, other than the said test action of A. *v.* B., may be enlarged until fourteen days next after judgment shall have been given in the said action of A. *v.* B. on the trial thereof, or until further order.

(*d*) As to staying proceedings in all actions but one raising the same question of right, upon the defendants consenting to be bound by the decision of that question in the test action, see *Amos* v. *Chadwick*, 4 Ch. D. 869; and Chitty's Arch. 1357, *et seq.* The application can only be made by defendants, and not by plaintiffs; *Amos* v. *Chadwick*, 4 Ch. D. 869; Lush. Pr. 564; and see *post* No. 1768 a. The application may be made immediately after appearance, and should be entitled in all the actions; Chitty's Arch. 1360. As to the effect of the order, see *Ibid.*, 1359. Where the actions are pending before different Judges, there must first be a transfer to the same Judge; see note (*a*) to No. 1763 *ante*.

(*e*) Where several actions are brought raising the same question of right, the Court has no power to consolidate the actions at the instance of the plaintiffs; *Amos* v. *Chadwick*, 4 Ch. D. 869. But the Court will, upon the application of the plaintiffs, allow one of the actions to proceed as a test action, and enlarge the time for pleading in the other actions, until the test action has been tried, on the plaintiffs undertaking to be bound by the result of the test action; *Amos* v. *Chadwick*, 4 Ch. D. 869; and see *Robinson* v. *Chadwick*, 7 Ch. D. 878.

CHAPTER XXVIII.

STAYING PROCEEDINGS.

Section I.—Where Action or Proceeding commenced without Plaintiff's Authority.

1769.

Notice of motion by sole plaintiff, to stay proceedings in action commenced without his authority (*a*).

Formal parts: see ante No. 1571.

on the part of A. B., the plaintiff named in the writ of summons issued in this action on the —— day of ——, 187—:

1. That all further proceedings in this action may be stayed: the same having been commenced without the authority of the applicant.

2. That the defendant's costs of this action may be taxed; and that Mr. C. D., the solicitor by whom the writ of summons in this action was issued, may be ordered to pay such costs to the defendants.

3. That in case he shall neglect so to do, and the applicant shall pay such costs, or any part thereof, the said C. D. may be ordered to repay to the applicant what he shall so pay, together with such costs as he shall be put to by reason of such non-payment.

4. That the said C. D. may be ordered to pay to the applicant his costs of this action, if any, and of this application: to be taxed as between solicitor and client.

1770.

Notice of motion by a co-plaintiff, to strike his name out of writ issued without his authority (*b*).

Formal parts: see ante No. 1571.

on the part of A. B., one of the plaintiffs named in the writ of summons issued in this action on the —— day of ——, 187—, that his name may be struck out of the said writ of summons, the same having been issued without his authority; and that Mr. C. D., the solicitor by whom the said writ was issued, may be ordered to pay to the said A. B. his costs, if any, of this action, and his costs of this application: to be taxed as between solicitor and client.

(*a*) See Dan. Pr. 260, 692. For order in like case, see Seton, ed. 4, 635, No. 1.

(*b*) See Dan. Pr. 260, 692. For order in like case, see *Edmunds* v. *Lawrence*, M. R., 3 Mar. 1864, Reg. Lib. A. 524; Seton, ed. 4, 635, No. 2.

1771. Affidavit in support of motion by sole plaintiff, or a co-plaintiff (*c*).

In the High Court of Justice,
Chancery Division.
[*Title, and reference to the record.*]

I, A. B., of [*residence and addition*], the above-named plaintiff [*Or*, one of the above-named plaintiffs], make oath and say as follows:

1. On the —— of ——, 187—, I for the first time became aware that this action had been commenced in my name as the plaintiff [*Or*, one of the plaintiffs] therein.

2. I am informed and believe that the object of the said action is [*State object, shortly; as thus:*] to have the estate of E. F., deceased, administered under the direction of this honourable Court.

3. Mr. C. D., the solicitor, by whom, as I am informed and believe, the writ of summons in the said action was issued, or any person on his behalf, has never been authorised by me, or by my direction, to commence the said action, or to institute or prosecute any other suit or proceeding in my name, or on my behalf, relating to the subject-matter of the said action. I have never consented to, or acquiesced in, and I desire to repudiate this action.

4. [*State any communication had with the solicitor who issued the writ, and explain the cause of any delay in applying, since deponent discovered that the action had been instituted.*]

5. [*Show means of knowledge.*]

1772. Summons to dismiss an originating summons, taken out without authority, or to stay proceedings (*d*).

Formal parts: see ante No. 881.

on the part of A. B., in the summons taken out in this matter [*Or*, matter and cause], dated the —— day of ——, 187—, named, as the applicant therein:

1. That the duplicate of the said summons may be taken off the file of this Court, and the said summons be dismissed with costs: on the ground that such summons has been taken out without the authority of the applicant.

2. That the defendant's [*Or*, respondent's] costs occasioned by the said summons may be taxed; and that Mr. C. D., the solicitor by whom the said summons has been taken out, may be ordered to pay such costs to the persons entitled thereto.

3. That in case he shall neglect so to do, and the applicant shall pay the said costs, or any part thereof, the said C. D. may be ordered to re-pay to the applicant what he shall so pay, together with such costs as he shall be put to by reason of such non-payment.

4. That the said C. D. may be ordered to pay to the applicant his costs, if any, of the said summons, and consequent thereon, and of this application: to be taxed as between solicitor and client.

(*c*) See Dan. Pr. 261.
(*d*) See Dan. Pr. 1051; and *ante*, note (*a*) to No. 1769.

1773.

Summons by a co-applicant, to strike his name out of a duplicate summons filed without his authority, and stay proceedings (*e*).

Formal parts: see ante No. 881.

on the part of A. B., in the summons taken out in this matter [*Or*, matter and cause], dated the —— day of ——, 187—, named, as one of the applicants therein:

1. That the name of the said A. B. may be struck out of the duplicate, filed in the Record and Writ Clerk's office, of the said summons: on the ground that the said summons has been taken out without his authority; and that no further proceedings may be taken in his name, or on his behalf.

2. That Mr. C. D., the solicitor by whom the said summons has been taken out, may be ordered to pay to the said A. B. his costs, if any, of the said summons, and consequent thereon, and of this application: to be taxed as between solicitor and client.

1774.

Affidavit in support (*f*).

In the High Court of Justice,
Chancery Division.

[*Title of the matter, or matter and cause, and reference to the record.*]

I. A. B., of [*residence and addition*], in the summons taken out in this matter [*Or*, matter and cause], dated the —— day of ——, 187—, named, as the applicant [*Or*, one of the applicants] therein make oath and say as follows:

1. On the —— day of ——, 187—, I for the first time became aware that the said summons had been taken out in my name, or on my behalf, as the applicant [*Or*, one of the applicants] therein.

2. I am informed and believe that the object of the said summons is [*State, shortly, what; as thus:*] to have the estate of G. H., deceased, administered under the direction of this honourable Court.

3. Mr. C. D., the solicitor by whom, as I am informed and believe, the said summons has been taken out, has not, nor has any person on his behalf, ever been authorised by me to take out the said summons, or to institute or prosecute any suit or proceeding in my name, or on my behalf, relating to the subject-matter of the said summons. I have never consented to, or acquiesced in, and I desire to repudiate, the application made by the said summons.

[4. *State any communication had with the solicitor who took out the summons, and explain the cause of any delay in applying, since the deponent discovered that the summons had been issued.*]

[5. *Show means of knowledge.*]

(*e*) See Dan. Pr. 1051; and note (*b*) to No. 1770 *ante*.

(*f*) See Dan. Pr. 1051.

SECTION II.—WHERE AN ACTION IS BROUGHT IN THE NAME OF AN INFANT (*g*).

[*Same as* No. 58 *ante.*] 1775.

SECTION III.—WHERE SEVERAL ACTIONS ARE BROUGHT FOR THE SAME PURPOSE IN THE NAME OF AN INFANT (*h*).

[*Same as* Nos. 59 *to* 62 *ante.*] 1776.

SECTION IV.—WHERE AN INFANT PLAINTIFF COMES OF AGE (*j*).

[*Same as* Nos. 64 *to* 67 *ante.*] 1777.

SECTION V.—WHERE AN ACTION IS COMMENCED IN THE NAME OF A MARRIED WOMAN WITHOUT HER CONSENT (*k*).

[*Same as* Nos. 166 *and* 167 *ante.*] 1778.

SECTION VI.—WHERE AN ACTION IS COMMENCED OR PROSECUTED BY A MARRIED WOMAN WITHOUT A NEXT FRIEND AND WITHOUT LEAVE (*l*).

[*Same as* Nos. 177, 180, 181 *ante.*] 1779.

(*g*) See note (*p*) to No. 58 *ante.*
(*h*) See notes to Nos. 59 to 62 *ante.*
(*j*) See notes to Nos. 64 to 67 *ante.*
(*k*) See notes to Nos. 166 and 167 *ante.*
(*l*) See notes to Nos. 177, 180, 181 *ante.*

SECTION VII.—WHERE DEFAULT IS MADE BY THE PLAINTIFF IN PAYMENT OF COSTS OF A FORMER ACTION AGAINST SAME DEFENDANT FOR SAME PURPOSE.

1780.

Notice of motion to stay proceedings till costs of former action are paid (*m*).

Formal parts: see ante No. 1571.

on the part of the defendant A. B., that all further proceedings in this action

[*If there are other defendants, add:*] as against the said defendant

may be stayed, until after the plaintiffs shall have paid to the said defendant the sum of £——, the amount of the taxed costs directed to be paid by them to him, by the order made in the action of C. *v.* B. (187—, C. No. —), dated the —— of ——, 187—.

1781.

Further notice of motion for dismissal of action, in default of payment (*n*).

Formal parts: see ante No. 1571.

on the part of the defendant A. B., that the plaintiffs may be ordered, on or before the —— of ——, 187—, to pay to the defendant the sum of £——, mentioned in the order in this action dated the —— of ——, 187—, pursuant to the order made in the action of C. *v.* B. (187—, C. No. ——), dated the —— of ——, 187—; or in default thereof, that this action may be dismissed

[*If there are other defendants, add:*] as against the said defendant

without further order: with costs to be paid by the plaintiffs to the said defendant.

(*m*) See Dan. Pr. 696; *Cannot* v. *Morgan*, 1 Ch. D. 1; *Re The United Kingdom Electric Telegraph Co.*, 24 W. R. 593. The application should be made before taking any step in the new action. For form of order, see *Long* v. *Stone*, V.-C. E., 6 Dec. 1849, Reg. Lib. B. 197; 13 Jur. 1091.

(*n*) See Dan. Pr. 697. For order in like case, see *Ernest* v. *Govett*, V.-C. W., 9 July, 1863, Reg. Lib. A. 1731. The effect of an order in this form is that at the expiration of the time limited for payment, unless the amount has been paid, the action is at an end; and an order made after the expiration of the time, giving further time for payment, is *ultra vires*; *Whistler* v. *Hancock*, 3 Q. B. D. 83.

SECTION VIII.—WHERE DEFAULT IS MADE BY THE PLAINTIFF IN PAYMENT OF COSTS ORDERED TO BE PAID BY HIM.

1782. Notice of motion to stay proceedings till payment by plaintiff of costs incurred in the action (*o*).

Formal parts: see ante No. 1571.
on the part of the defendant C. D., that all further proceedings in this action
[*If there are other defendants, add:*] as against the said defendant
may be stayed until after the plaintiff shall have paid to the said defendant the sum of £——, the amount of the taxed costs payable by the said plaintiff to the said defendant pursuant to the order dated the —— day of ——, 187—.

1783. Further notice of motion for dismissal of action in default of payment (*p*).

Formal parts: see ante No. 1571.
on the part of the defendant C. D., that the plaintiff may be ordered, on or before the —— day of ——, 187—, to pay to the defendant the sum of £——, the amount of the taxed costs payable by the plaintiff to the said defendant pursuant to the order dated the —— day of ——, 187—. And that in default thereof this action may be dismissed
[*If there are other defendants, add:*] as against the said defendant
without further order: with costs to be paid by the plaintiff to the said defendant.

SECTION IX.—WHERE THE ACTION IS FRIVOLOUS AND VEXATIOUS, AND AN ABUSE OF THE PROCESS OF THE COURT.

1784 Notice of motion to stay proceedings in action which is frivolous and vexatious (*q*).

Formal parts: see ante No. 1571.
on the part of the defendant A. B., that all further proceedings in this action may be stayed
[*If there are other defendants than the applicant, add:*] as against the said defendant A. B.
on the ground that this action is frivolous and vexatious, and an abuse of the process of the Court.

(*o*) See Dan. Pr. 697. For order in like case, see *Bradbury* v. *Shawe*, V.-C. K.-B., 22 July, 1850, Reg. Lib. A. 1629; 14 Jur. 1042; *White* v. *Bromige*, V.-C. Hall, 4 August, 1877; 26 W. R. 312.

(*p*) See *Kennedy* v. *Edwards*, 11 Jur. N. S. 153; *White* v. *Bromige*, 26 W. R. 312. As to the effect of an order in this form, see *Whistler* v. *Hancock*, 3 Q. B. D. 83; 26 W. R. 211; note (*n*) to No. 1781 *ante*.

(*q*) See *Castro* v. *Murray*, L. R. 10 Exch. 213; *Dawkins* v. *Prince Edward of Saxe Weimar*, 1 Q. B. D. 499; *Edwards* v. *A.-G.*, 26 W. R. 550.

Section X.—Where Defendant submits to Satisfy Plaintiff's Demand (*a*).

1785.

Notice of motion or summons by defendant to stay proceedings on submitting to satisfy plaintiff's demand.

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant A. B., that [*Here state the terms proposed, as thus:*]

upon payment to the plaintiff of £——, being the amount of the debt due from X. Y., deceased, in the writ of summons in this action named, to the plaintiff, and of interest thereon at £—— per cent. per annum from the —— day of ——, 187—, until payment; *Or*,

upon delivery to the plaintiff of the furniture and goods mentioned in the writ of summons in this action; *or as may be*;

and upon payment to the plaintiff of his costs of this action to be taxed, all further proceedings in this action may be stayed [*If there are other defendants than the applicant, add:*] as against the said defendant A. B.

1786.

Another form thereof.

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant, that, upon payment to the plaintiff of the sum of £—— in respect of his claim for damages for the breach of the contract mentioned in the writ of summons in this action [*or as may be*], and of his costs of this action to be taxed, all further proceedings in this action may be stayed, and that, in the event of the plaintiff refusing to accept the said sum of £——, the defendant may be at liberty to pay the same into Court to the credit of this action. And that, in the event of the plaintiff subsequently taking the said sum of £—— out of Court in satisfaction of his said claim, or of his proceeding to trial and not recovering more than the said sum in respect of his said claim, the plaintiff may be ordered to pay to the defendant his costs of this action subsequent to this application.

(*a*) See Dan. Pr. 694, 695; Chitty's Arch. 1374—1380. Where the plaintiff's claim is for a debt or liquidated demand only, the defendant may obtain a stay of proceedings, without any application for the purpose, by making payment within four days after service, or, in case of a writ not for service within the jurisdiction, within the time allowed for appearance, of the amount claimed by the indorsement on the writ for debt, or in respect of the plaintiff's demand, and for costs respectively; R. S. C. Ord. III. 7. Where the action is brought to recover a debt or damages, the same result (viz., a stay of the action) may be obtained by the payment of money into Court, if the plaintiff accepts the sum paid in in satisfaction; R. S. C. Ord. XXX. 1, 4.

1787.
Another form.

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the defendant, that, upon delivery to the plaintiff, or to Mr. X. Y., his solicitor, of the furniture and goods for the recovery whereof this action is brought, except the following articles [*Specify them*], and upon payment to the plaintiff or his solicitor of one shilling damages, and his costs of this action to be taxed, all further proceedings in this action may be stayed. And that, in the event of the plaintiff refusing to accept the same, and not subsequently recovering in respect of any goods other than those offered to be delivered up, or greater damages than one shilling in respect of such last-mentioned goods, the plaintiff may be ordered to pay to the defendant his costs of this action subsequent to this application.

SECTION XI.—IN ACTION BY LANDLORD TO RECOVER LAND FOR NON-PAYMENT OF RENT, OR FOR BREACH OF COVENANT OR CONDITION TO INSURE.

1788.
Notice of motion or summons by defendant to stay action for recovery of land for non-payment of rent (*d*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the defendant, that it may be referred to the Taxing Master to tax the plaintiff's costs of this action, and that, upon payment to the plaintiff, or to Mr. X. Y., his solicitor, or upon payment into Court to the credit of this action, of the sum of £——, being the amount of the rent and arrears of rent due from the defendant to the plaintiff in respect of the premises [*Describe them*] mentioned in the indorsement on the writ of summons in this action, and upon payment of the amount of the said costs when taxed, all further proceedings in this action may be stayed.

1789.
Another form thereof (*d*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the defendant:

1. That an account may be taken of what is due from the defendant to the plaintiff for rent and arrears of rent due from the defendant to the plaintiff in respect of the premises [*Describe them*] mentioned in the indorsement on the writ of summons in this action.

2. That it may be referred to the Taxing Master to tax the plaintiff his costs of this action.

(*d*) See the C. L. P. Act, 1852 (15 & 16 Vict. c. 76), s. 212; C. L. P. Act, 1860 (23 & 24 Vict. c. 126), s. 1; Chitty's Arch. 1064—1066.

3. That upon payment to the plaintiff, or to Mr. X. Y., his solicitor, or upon payment into Court to the credit of this action, of the several amounts which shall be certified to be due from the defendant to the plaintiff, in respect of arrears of rent and of costs as aforesaid, all further proceedings in this action may be stayed.

1790.

Notice of motion or summons by defendant to stay action to recover land for breach of a covenant or condition to insure (*e*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant, that: the premises mentioned in the indorsement on the writ of summons in this action, and for the recovery whereof this action is brought, being now duly insured against loss or damage by fire in accordance with the covenant [*Or*, condition] contained in the lease, dated the —— day of ——, 187—, under which the said premises are held: it may be referred to the Taxing Master to tax the plaintiff his costs of this action, and that upon payment by the defendant to the plaintiff of the amount of such costs when taxed, all further proceedings in this action may be stayed.

1791.

Affidavit in support.

Formal parts: see ante No. 693.

1. This action is brought to recover possession of the premises [*Describe them*] upon a forfeiture incurred by the breach of a covenant [*Or*, condition] to insure the said premises against loss or damage by fire in the sum of £——, in the —— Office, in the names of ——, contained in the lease dated the —— day of ——, 18—, under which the said premises are held by me [*Or*, by the said defendant].

2. No loss or damage by fire of or to the said premises has actually occurred, and the said premises are now duly insured against loss or damage by fire in sum of £——, in the —— Office, in the names of ——, in conformity with the said covenant [*Or*, condition].

3. The breach of the said covenant [*Or*, condition] was committed [*Here state the circumstances under which the breach was committed, showing that it was committed through accident, or mistake, or otherwise without fraud or gross negligence*].

4. I have [*Or*, The said defendant has] not at any time heretofore been relieved in respect of any breach of the said covenant [*Or*, condition].

5. [*Show means of knowledge.*]

(*e*) See 22 & 23 Vict. c. 35, ss. 4, 6; C. L. P. Act, 1860 (23 & 24 Vict. c. 126), ss. 2, 3; Chitty's Arch. 1068.

SECTION XII. — IN ACTION BY MORTGAGEE FOR RECOVERY OF POSSESSION OF MORTGAGED PREMISES, OR FOR PAYMENT OF MORTGAGE MONEY (*f*).

1792. Notice of motion or summons to stay proceedings in action by mortgagee on payment of debt with costs (*f*).

Formal parts : see ante No. 1571 *or* No. 881.

on the part of the defendant :

1. That an account may be taken of what is due to the plaintiff for principal moneys and interest due on the mortgage in the statement of claim in this action mentioned, and for costs expended in any other action upon such mortgage.

2. That it may be referred to the Taxing Master to tax the plaintiff his costs of this action.

3. That upon payment to the plaintiff, or, in case of his refusal to accept the same, upon payment into Court to the credit of this action, of the several amounts which shall be certified to be due in respect of principal, interest, and costs as aforesaid, and for the costs of this action, such payment may be deemed and taken to be in full satisfaction and discharge of such mortgage, and that the defendant may be discharged of and from the same accordingly. And that upon such payment being made as aforesaid, the plaintiff may be ordered to reconvey [*or as may be*] the premises comprised in the said mortgage, and such estate and interest as the plaintiff has therein to the defendant, or to such other person or persons as the defendant shall appoint ; such reconveyance to be prepared and executed at the costs and charges of the defendant, and to be settled by the Judge in case the parties differ about the same. And that the plaintiff may also be ordered to deliver to the defendant, or to such other person or persons as he shall appoint, all deeds, evidences, and writings in his custody relating to the title of the said mortgaged premises.

4. That all further proceedings in this action may be stayed, except for the purpose of giving effect to this order.

1793. Affidavit in support.

Formal parts : see ante No. 693.

1. This action is brought to recover the principal moneys and interest due under an indenture dated the —— day of ——, 187—, and made between [*State whom*], whereby the premises [*describe them*] were conveyed to the plaintiff by way of mortgage to secure the repayment of the same.

Or, 1. This action is brought to recover possession of the

(*f*) See 7 Geo. II. c. 20, s. 1 ; C. L. P. Act, 1852 (15 & 16 Vict. c. 76), ss. 219, 220 ; Chitty's Arch. 1076. For form of affidavit in support, see *post* No. 1793. For form of application under 7 Geo. II. c. 20, s. 2, in a foreclosure action, see *ante* No. 1529.

premises [*Describe them*], which by an indenture dated the —— day of ——, 187—, and made between [*State whom*], were conveyed to the plaintiff by way of mortgage, to secure the repayment of certain moneys therein mentioned.

2. An appearance to the writ of summons in this action was duly entered for me [*Or*, for the defendant C. D.] on the —— day of ——, 187—.

3. No action or proceeding is now pending for or touching the foreclosing or redeeming of such mortgaged lands or hereditaments.

4. The right to redeem the said premises comprised in the said mortgage is now vested in me [*Or*, in the said defendant C. D.].

5. [*Show means of knowledge.*]

Section XIII.—On Special Terms agreed on by the Parties.

1794.

Motion paper to stay proceedings on special terms by consent (*h*).

Formal parts: see ante No. 1570.

To move on behalf of all parties [*Or*, of the plaintiff; *Or*, of the defendants: *or as may be* (*j*)], that, by consent, all further proceedings in this action may be stayed, without costs [*Or*, on the terms within mentioned; *or as may be*].

1795.

Petition of course for the like (*k*).

Formal parts: see ante No. 1576.

The humble petition of the plaintiff [*or as may be*]

Showeth as follows:

1. [*State the proceedings in the action, as thus:*] On the —— day of ——, 187—, your petitioner [*Or*, the plaintiff] issued his writ of summons in this action, and the defendant [*Or*, your petitioner] duly appeared thereto, and on the —— day of ——, 187—, judgment was made therein, whereby certain accounts and inquiries were directed to be taken and made, but the Chief

(*h*) By consent, an order staying proceedings on certain terms agreed on, may be obtained on motion of course, or on petition of course, or on special motion or petition, or on summons; Dan. Pr. 696. Where any of the parties are not *sui juris*, or are executors or trustees, or a fund in Court is dealt with, or the terms are complicated, the application should be by special petition.

(*j*) If the motion is not made on behalf of all parties, a brief must be given to counsel to appear and consent on behalf of the other parties.

(*k*) See note (*h*) to No. 1794 *ante*. For form of consent, see No. 1577 *ante*. For form of order, see *Maltby* v. *Ware*, M. R. 4 May, 1870, Rolls' Lib.

Clerk has not yet made his certificate of the result thereof [*or as may be*].

2. Your petitioner has now agreed with the defendant [*or as may be*], that all further proceedings in this action shall be stayed upon the terms following, that is to say: [*State the terms, as thus:*]

that each party shall pay his own costs of this action. *Or,*

that the defendant shall pay to the plaintiff his costs of this action to be taxed. *Or,*

that the defendant shall pay to the plaintiff £100 on or before the —— day of ——, 187—, together with his costs of this action to be taxed.

Your petitioner therefore humbly prays, that all further proceedings in this action may be stayed on the terms aforesaid.

And your petitioner will ever pray, &c.

1796. Notice of motion or summons for the like (*l*).

Formal parts: see ante No. 1571 *or* 881.

on the part of the plaintiff [*or as may be*], that, by consent, all further proceedings in this action may be stayed on the terms following, that is to say: [*State the terms*]; and that all proper directions may be given for carrying the said terms into effect.

1797. Special petition for the like (*m*).

Formal parts: see ante No. 1578.

1. [*State the proceedings in the action, the terms agreed upon, and any other facts and circumstances material in the particular case; see ante* No. 1795.]

Your petitioner therefore humbly prays, that all further proceedings in this action may be stayed upon the terms agreed upon as aforesaid, and that all proper directions may be given for carrying the said terms into effect.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

(*l*) See note (*h*) to No. 1794 *ante*. For form of order in like case on motion, see *Preddle* v. *Wood*, V.-C. W. 26 July, 1866, Reg. Lib. B. 2027; and on summons, see *Gaby* v. *Gaby*, M. R. at Chambers, 16 Feb. 1864, Reg. Lib. A. 323.

(*m*) See note (*h*) to No. 1794 *ante*. For order approving a compromise on behalf of infants, see *Jones* v. *Williams*, V.-C. S. 7 July, 1865, Reg. Lib. A. 1335.

1798. Notice of motion or summons to enforce an agreement for the compromise of an action (*n*).

Formal parts : see ante No. 1571 *or* 881.

on the part of the defendant [*or as may be*], that all further proceedings in this action may be stayed, in accordance with the terms of an agreement for the compromise of this action, made between the plaintiff of the one part and the defendant of the other part, and dated the —— day of ——, 187—. And that the plaintiff may be ordered to pay to the defendant his costs of this application, to be taxed.

SECTION XIV.—WHERE JUDGMENT HAS BEEN GIVEN IN ANOTHER ACTION OR PROCEEDING FOR THE SAME PURPOSE (*a*).

1799. [*Same as* Nos. 1766 *and* 1767 *ante.*]

SECTION XV.—WHERE SEVERAL ACTIONS ARE BROUGHT RAISING THE SAME QUESTION (*b*).

1800. [*Same as* No. 1768 *ante.*]

SECTION XVI.—WHERE THE PLAINTIFF IS ORDERED TO GIVE SECURITY FOR COSTS.

1801. [*See post* Nos. 1804 *to* 1810.]

SECTION XVII.—WHERE THE MATTERS IN DISPUTE HAVE BEEN AGREED TO BE REFERRED TO ARBITRATION (*c*).

1802. Notice of motion to stay action, after a reference agreed on.

Formal parts : see ante No. 1571.

on the part of the defendant that pursuant to the Common Law

(*n*) Under the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-ss. 5, 7, the Court has jurisdiction, upon motion or summons, to stay all further proceedings in an action, in accordance with the terms of an agreement of compromise ; *Eden* v. *Naish*, 7 Ch. D. 781.

(*a*) See note (*c*) to No. 1766 *ante*.

(*b*) See note (*d*) to No. 1768 *ante*.

(*c*) By the C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 11, whenever the parties to any instrument in writing, to be executed after the passing of the Act, shall agree that any then existing or future differences between them

Procedure Act, 1854, s. 11, all proceedings in this action may be stayed: the matters in difference therein between the parties thereto, having been agreed to be referred to arbitration.

Section XVIII.—Pending an Appeal (*d*).

[*Same as* No. 1442 *ante.*] 1803.

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shall be referred to arbitration, and any one or more of the parties so agreeing shall, nevertheless, commence an action or suit against the other party or parties, or any of them, in respect of the matters so agreed to be referred, the Court or a Judge may, on the application of the defendant or defendants after appearance, and before plea or answer, make an order staying all proceedings in such action or suit; see Dan. Pr. 1906—1908; *Law* v. *Garrett*, 26 W. R. 426. The application must be made after appearance and before delivering a statement of defence.

(*d*) See note to No. 1442 *ante.*

CHAPTER XXIX.

SECURITY FOR COSTS (*a*).

SECTION I.—THE APPLICATION FOR SECURITY (*b*).

(1.) *Where the plaintiff or a counter-claiming defendant is resident out of the jurisdiction* (*c*).

(*a*) Where security for costs is required, the security must be of such amount, and must be given at such time or times, and in such manner and form as the Court or a Judge shall direct; R. S. C. Ord. LV. (R. S. C. Feb. 1876, rule 7). The Court will follow the old rule as to the amount of security for costs, unless some reason be shown for increasing the amount; *Paxton* v. *Bell*, 24 W. R. 1013. As to the old rule, see Cons. Ord. XL. rule 6; and Dan. Pr. 33. But in a proper case, the Court will exercise its discretion, and require security of an adequate amount to be given; *Republic of Costa Rica* v. *Erlanger*, 3 Ch. D. 62. Recent cases seem to have established, that it is a convenient practice to require the plaintiff to give security in £100 at first, to cover the expenses of putting in a statement of defence, and to allow the defendant to apply from time to time to enlarge that amount, as the expenses increase; *Western of Canada Oil, Land, and Works Co.* v. *Walker*, L. R. 10 Ch. 628; *Republic of Costa Rica* v. *Erlanger*, 3 Ch. D. 62. For form of application to increase security, see *post* No. 1825.

(*b*) An order for security for costs cannot now be obtained as of course; a special application should be made, and in general by summons at Chambers. The application for security should be made at the earliest possible time after the fact of his opponent's residence out of the jurisdiction, or other circumstance entitling him to the security, has come to the applicant's knowledge, and before taking any further step; Dan. Pr. 30; but an application for security is not too late, if made immediately after a new case is set up, materially increasing the costs; *Northampton Coal Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500.

(*c*) If the plaintiff, or his next friend, or the petitioner is resident out of the jurisdiction, the Court will, on the application of the defendant or respondent, order him to give security for the cost of the action or petition, and will in the meantime direct all proceedings to be stayed; Dan. Pr. 28; but where the claim of a plaintiff resident out of the jurisdiction was admitted by the defendant, and the latter set up a set-off and counter-claim against the plaintiff in a sum exceeding the plaintiff's claim, it was held that the defendant was really the litigant party, and that he was not entitled to an order requiring the plaintiff to give security; *Winterfield* v. *Bradnum*, 26 W. R. 353; affirmed on appeal; 26 W. R. 472. Where a defendant setting up a counter-claim is resident out of the jurisdiction, the Court will order him to give security, and that for the costs of the whole action, and not of the

1804.
Notice of motion or summons for security for costs (*a*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the defendant C. D. [*Or*, of the respondent C. D.; *Or*, of the plaintiff], that the plaintiff [*Or*, the petitioner; *Or*, the defendant C. D.] who is resident at ——, in the [kingdom] of ——, out of the jurisdiction of this honourable Court, may be ordered, within —— days, to give security in the sum of £—— (*e*), to answer costs in this action [*Or*, matter].

[*If the application is made by a defendant or respondent, add:*] And that in the meantime all proceedings in this action [*Or*, matter] may be stayed.

[*If the application is made by one of several defendants or respondents, add:*] as against the said defendant [*Or*, respondent] C. D.

1805.
Affidavit in support.

Formal parts: see ante No. 693.
1. The above-named plaintiff [*Or*, petitioner; *Or*, defendant C. D.] is resident at ——, in the [kingdom] of ——, out of the jurisdiction of this honourable Court.
2. [*Show means of knowledge.*]

(2.) *Where the next friend of a married woman plaintiff is not a person of substance* (*f*).

1806.
Notice of motion or summons for security for costs by next friend of married woman plaintiff.

[*Same as* Nos. 178 *and* 179 *ante.*]

(3.) *Under the* 10*th section of the County Courts Act*, 1867 (*g*).

1807.
Notice of motion or summons for security for costs.

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the defendant A. B., that, unless the plaintiff shall,

counter-claim merely; *The Julia Fisher*, 2 P. D. 115. A party is not now entitled to security for costs on the ground that the opposite party is resident out of the jurisdiction in Scotland or Ireland; Judgments Extension Act, 1868 (31 & 32 Vict. c. 54), ss. 1, 2, 5; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 76.

(*d*) See notes (*a*), (*b*), and (*c*), at p. 966.

(*e*) As to the amount of security, see note (*a*), at p. 966.

(*f*) See note (*p*) to No. 178 *ante*.

(*g*) By the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 10, the defendant in any action of tort brought in a superior Court, may make an affidavit that the plaintiff has no visible means of paying the defendant's costs should a verdict be not found for the plaintiff, and thereupon a Judge of the Court in which the action is brought has power to make an order that, unless

within —— days, give security in the sum of £—— (*h*) for the said defendant's costs of this action, all proceedings in this action may be stayed, or that this action may be remitted for trial before the County Court of ——, holden at ——.

1808.
Affidavit in support.

Formal parts: see ante No. 693.

1. The plaintiff has no visible means of paying my costs [*Or*, the costs of the defendant] should judgment not be given for the said plaintiff.

2. [*Show means of knowledge or belief.*]

(4.) *Under the 69th section of the Companies Act*, 1862 (*k*).

1809.
Notice of motion or summons for security for costs.

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant A. B., that, pursuant to section 69 of "The Companies Act, 1862," the plaintiffs, the —— Company, Limited, may be ordered, within —— days, to give security in the sum of £—— (*kk*) for the said defendant's costs of this action, and that in the meantime all proceedings in this action may be stayed [*If there are other defendants than the applicant, add:*] as against the said defendant A. B.

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the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs, to the satisfaction of one of the masters of the said Court, or satisfy the Judge that he has a cause of action fit to be prosecuted in the superior Court, all proceedings in the action shall be stayed, or, in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the Judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named. By the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 67, the provisions contained in the 10th section of the County Courts Act, 1867, are to apply to all actions in the High Court of Justice, in which any relief is sought which can be given in a County Court. It will be observed that these provisions apply only to actions of tort, where the relief sought can be given in a County Court.

(*h*) As to the amount of security, see note (*a*) at p. 966, *supra*.

(*k*) By the Companies Act, 1862 (25 & 26 Vict. c. 89) s. 69, where a limited company is plaintiff in any action or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that, if the defendant be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given; see Dan. Pr. 27, note (*a*); where the plaintiffs were a limited company in liquidation, an order was made that they should give security for costs; *Northampton Coal Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500.

(*k k*) As to the amount of security, see note (*a*) at p. 966, *supra*.

1810. Affidavit in support.

Formal parts: see ante No. 693.

1. There is good reason to believe that the assets of the above-named plaintiffs, the —— Company, Limited, will be insufficient for the payment of the costs of the defendant A. B. [*Or*, of my costs] of this action, should the said defendant A. B. [*Or*, should I] be successful in his [*Or*, my] defence.

2. [*Show reasonable grounds for such belief; that the plaintiff company are in liquidation is a sufficient ground* (*k*).]

3. [*Show means of knowledge,*]

Section II.—Giving Security (*l*).

1811. Notice of name of proposed obligor (*m*).

Formal parts: see ante No. 21.

Take notice that the plaintiff [*or as may be*] proposes A. B., of [*residence and addition; If so:* and C. D., of, *&c.*], as a sufficient person [*Or*, sufficient persons] on his behalf to give security, by bond, for costs, pursuant to the order dated the —— of ——, 187—.

1812. Notice of objection to proposed obligor (*n*).

Formal parts: see ante No. 21.

Take notice that A. B., in the notice of the —— of ——, 187—, named, as surety for costs, is objected to by me, on the ground that he is not a sufficient person to give such security, in conformity with the order dated the —— of ——, 187—.

1813. Notice substituting another obligor in lieu of proposed obligor objected to (*n*).

Formal parts: see ante No. 21.

Take notice that, in lieu of A. B. (and C. D.) named in the notice, dated the —— day of ——, 187—, the plaintiff [*or as may be*] proposes E. F., of [*residence and addition; If so:* and G. H., of, *&c.*] as a sufficient person [*Or*, sufficient persons] [*Continue as in* No. 1811 *ante, to end*].

(*k*) *Northampton Coal Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500.

(*l*) See Dan. Pr. 33 to 35.

(*m*) See Dan. Pr. 34.

(*n*) See Dan. Pr. 35.

1814.

Affidavit of proposed obligor, in justification (*n*).

Formal parts: see ante No. 693.

1. I am the person proposed by the plaintiff [*or as may be*] to give security on his behalf, by bond to the Record and Writ Clerk, in the penalty of £100 [*or as may be*] conditioned to answer costs in this action [*Or*, matter; *Or*, matter and cause], pursuant to the order dated the ——, 187—.

2. I am well and truly worth the sum of £—— [*Double the amount of security directed*], of lawful money of Great Britain, over and above what is sufficient to pay all my just debts.

1815.

Bond as security for costs (*o*).

KNOW all men by these presents, that I, A. B., of [*place of residence and addition*], am held and firmly bound

[*Or, if two obligors, say:*] that we, A. B., of, *&c.*, and C. D., of, *&c.*, are jointly and severally held and firmly bound

to E. F. [*Insert name of Record and Writ Clerk to whose division the action or matter is attached*], esquire, one of the Clerks of Records and Writs of the Chancery Division of Her Majesty's High Court of Justice, in the penal sum of one hundred pounds [*or other sum mentioned in the order*], of good and lawful money of Great Britain, to be paid to the said E. F., his certain attorney, executors, administrators, or assigns: For which payment to be well and faithfully made I bind myself, and my

Or, we bind ourselves, and each of us, our and each of our

heirs, executors, and administrators, firmly by these presents, sealed with my seal.

Or, with our seals.

Dated this —— day of ——, 187—.

Whereas, by an order of Her Majesty's High Court of Justice, dated the —— day of ——, 187—, made in an action wherein B. A. is plaintiff [*Or*, B. A. and another [*Or*, others] are plaintiffs],

(*n*) See Dan. Pr. 35.

(*o*) See Dan. Pr. 33. The bond should be written on paper, and must bear the like Inland Revenue stamp as a common money bond for a similar amount: being 2*s.* 6*d.*, where the sum does not exceed £100, and 1*s.* 3*d.* for each additional £50 up to £300, and 2*s.* 6*d.* for every £100, or fractional part of £100, beyond: see the Stamp Act, 1870 (33 & 34 Vict. c. 97), Sched., Mortgage, Bond, &c.; and see Dan. Pr. 33. Before being left with the Record and Writ Clerk, the bond should be indorsed with the short title of the action or matter, the words "Bond for security for costs," and the name, &c., of the solicitor leaving it: Dan. Pr. 33, note (*b*).

and D. C. is defendant [*Or*, D. C. and another [*Or*, others] are defendants],

Or, made in a matter [*Or*, in a matter and cause] intituled,

In the matter of, *&c.*,

on the application of the defendant D. C. [*or as may be*], It was ordered that [*Recite the mandatory part of the order directing the security to be given*]: And whereas the above bounden A. B. hath,

Or, the above bounden A. B. and C. D. have,

at the request of the said [*Person required to give security*], agreed to enter into the above-written obligation, subject to the condition hereinafter contained:

Now the condition of the above-written obligation is such, that if the above bounden A. B., his

Or, if the above bounden A. B. and C. D., or either of them, their or either of their

heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to

[*If the bond is given to all the defendants* (*p*), *say:*] all the defendants in the said action

[*If the bond is given to less than all the defendants, or to respondents* (*p*), *name the particular defendants or the respondents:*]

all such costs as the said High Court of Justice shall think fit to award to the said defendants, or to any of them [*or as may be*], in the said action [*Or*, matter; *or as may be*], then the above-written obligation is to be void; or else to remain in full force and virtue.

A. B. (Seal).
[C. D. (Seal)].

Signed, sealed, and delivered by the above bounden A. B. (and C. D.), in the presence of,

B. A., of [*residence and addition*].

1816.

Notice of deposit of bond (*q*).

Formal parts: see ante No. 21.

Take notice that I have this day deposited with the Clerk of Records and Writs the bond of A. B., of [*residence and addition, as in bond; If so:* and C. D., of, *&c.*], conditioned to answer costs, pursuant to the order dated the —— of ——, 187— [*Order directing bond to be given*].

(*p*) As to the expediency of extending the bond to all the defendants or respondents, see Dan. Pr. 34.

(*q*) See Dan. Pr. 33.

1817.
Notice of motion or summons for leave to pay security fund into Court, in lieu of bond (*r*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the plaintiff [*or as may be*], that, in lieu of the security directed to be given by the order dated the —— of ——, 187—, he may be at liberty, within (ten) days, to pay (£120) into Court to the credit of [*Short title of action, and reference to record; or short title of matter*], to an account to be entitled "Security for Costs," to answer costs, in case any costs shall be awarded to be paid by him [*If desired, add:*] And that the same sum when so paid in may be invested in consolidated £3 per cent. annuities [*or as may be*].

1818.
Notice of payment into Court to answer costs.

Formal parts: see ante No. 21.
Take notice that I have this day paid into Court the sum of £—— to answer costs, pursuant to the order dated the —— day of ——, 187— [*Order directing payment into Court*].

SECTION III.—PROCEEDINGS WHERE NO SECURITY IS GIVEN, OR WHERE AN INSUFFICIENT SECURITY IS GIVEN, OR WHERE THE SECURITY GIVEN BECOMES INSUFFICIENT.

1819.
Notice of motion or summons for security to be given within a limited time (*s*).

Formal parts: see ante No. 1571 *or* No. 188.
on the part of the defendant C. D. [*or as may be*] that the plaintiff [*or as may be*] may be ordered, within (fourteen) days, pursuant to the order dated the —— day of ——, 187—, to procure some sufficient person on his behalf to give security by bond in the penalty of £100 [*or other sum mentioned in order*] conditioned to answer costs; and that, in the meantime, all proceedings in this action [*or as may be*] may be stayed
[*If there are other defendants or respondents, add:*] as against the said C. D.
And that in default of such security being given, this action [*or as may be*] may be dismissed without further order
[*If there are other defendants or respondents, add:*] as against the said C. D.
with costs to be paid by the plaintiff [*or as may be*] to the said C. D.

(*r*) See Dan. Pr. 34. For the mode of paying money into Court under an order, see *post*, note (*o*) to No. 1974.

(*s*) See Dan. Pr. 35; and *The Julia Fisher*, 2 P. D. 115, where, on a defendant resident out of the jurisdiction failing to give security for costs as ordered, his counter-claim was dismissed. For form of affidavit in support of the application, see *post* No. 1821. As to the effect of an order in this form, see *Whistler* v. *Hancock*, 3 Q. B. D. 83; *ante*, note (*n*) to No. 1781.

1820. Notice of motion or summons for better security to be given within a limited time (*t*).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the defendant C. D. [*or as may be*], that in lieu of or in addition to the bond of E. F., dated the —— day of ——, 187—, the plaintiff [*or as may be*] may be ordered [*Continue as in* No. 1819 *ante, to the end*].

1821. Affidavit in support where no security given.

Formal parts : see ante No. 693.
1. No bond conditioned to answer the costs of the defendant C. D. [*or as may be*] of this action [*or as may be*], has been deposited by the plaintiff [*or as may be*] with the Clerk of Records and Writs, to whose division this action [*or as may be*] is attached, pursuant to the order dated the —— day of ——, 187— [*Order directing bond to be given*], as I know from [*State means of knowledge*].

1822. Affidavit in support where insufficient security given (*u*).

Formal parts : see ante No. 693.
1. E. F., the person named as obligor in the bond dated the —— day of ——, 18—, conditioned to answer the costs of the defendant C. D. [*or as may be*] of this action [*or as may be*], and deposited with the Clerk of Records and Writs, to whose division this action [*or as may be*] is attached, pursuant to the order dated the —— day of ——, 187—, is not a sufficient or proper person to give the security directed by the said order.
2. [*State the facts which rendered E. F. an insufficient or improper person to give security.*]
3. [*Show means of knowledge.*]

1823. Notice of motion or summons for a new security to be given, on death or bankruptcy of obligor (*v*).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the defendant A. B. [*or as may be*], that the plaintiff [*or as may be*] may be ordered, within (fourteen) days, to procure some sufficient person on his behalf to give a new security to answer costs, in lieu of, or in addition to, the bond, dated the —— of ——, 187—, given pursuant to the order, dated the

(*t*) See Dan. 35 ; for form of affidavit in support, see *post* No. 1822.

(*u*) In answer to this affidavit the obligor must make an affidavit in justification ; for form, see *ante* No. 1814 ; and any other evidence may be adduced showing that the obligor is a proper person to give security.

(*v*) See Dan. Pr. 34.

—— day of ——, 187—, by E. F., who has since died [*Or*, become bankrupt; *or as may be*]; and that

[*In the case of an action, say:*] in the meantime all proceedings in this action may be stayed [*If there are other defendants, add:*] as against the said A. B.

[*In the case of a petition or summons, say:*] the said petition [*Or*, summons] may stand over until such security is given.

1824.
Affidavit in support.

Formal parts: see ante No. 693.

1. E. F., the obligor named in the bond dated the —— of ——, 187—, which was given as security for costs, pursuant to the order in this action [*Or*, matter; *or as may be*], dated the —— of ——, 187—, has since died [*Or*, has since been adjudicated a bankrupt].

2. The plaintiff [*or as may be*], the person required by the said order to give security for costs, is still permanently resident at ——, out of the jurisdiction of this honourable Court [*or as may be* (*w*)].

3. [*Show means of knowledge.*]

1825.
Notice of motion or summons for increase of security (*x*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant A. B. [*or as may be*], that in addition to the bond of E. F., dated the —— day of ——, 187—, which was given as security for costs, pursuant to the order in this action [*or as may be*], dated the —— day of ——, 187—,

Or, in addition to the sum of £—— paid into Court on the —— day of ——, 187—, as security for costs, pursuant to the order in this action [*or as may be*] dated the —— day of ——, 187—,

the plaintiff [*or as may be*] may be ordered, within —— days, to give further security in the sum of £—— to answer the said defendant's [*or as may be*] costs of this action [*or as may be*]. And that [*Conclude as in* No. 1804 *ante*].

(*w*) This paragraph is only necessary where the original order for security was obtained on the ground of the plaintiff being resident out of the jurisdiction.

(*x*) See *Western of Canada Oil, Land, and Works Co.* v. *Walker*, L. R. 10 Ch. 628; *Republic of Costa Rica* v. *Erlanger*, 3 Ch. D. 62; and *ante*, note (*a*) at p. 966.

1826. Affidavit in support.

Formal parts: see ante No. 693.

1. [*State the proceedings since former order directing security and probable course of future proceedings, showing that the amount of the security already given is inadequate.*]

2. [*State that the plaintiff against whom the application is made is still resident out of the jurisdiction, or other circumstances entitling the applicant to security.*]

3. [*Show means of knowledge.*]

Section IV.—Discharging the Order for Security.

1827. Notice of motion or summons to discharge order for security (*y*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that the order dated the —— day ——, 187—, directing security for costs to be given by him, may be discharged, he being now resident at [*State where*], within the jurisdiction of this honourable Court.

Section V.—Enforcing the Security (*z*).

1828. Notice of motion or summons for leave to put in suit a bond for costs.

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant A. B. [*or as may be*], that he may be at liberty to put in suit the bond dated the ——, 187—, given pursuant to the order dated the —— of ——, 187—, by C. D. to E. F., esquire, the Clerk of Records and Writs, conditioned to answer costs; and, for that purpose, that the said bond may be delivered by the proper officer to the said A. B.; and that the said A. B. may be at liberty to make use of the name of the said E. F., on first giving him a proper indemnity: such indemnity to be settled by the Judge, in case the parties differ.

1829. Receipt for the bond, and undertaking to indemnify the obligee (*a*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

Received the —— of ——, 187—, pursuant to the (foregoing) order dated the —— of ——, 187— [*Order to deliver out bond*] of

(*y*) See Dan. Pr. 37.

(*z*) See Dan. Pr. 36.

(*a*) See Dan. Pr. 36. On delivering out the bond, the Record and Writ Clerk requires a copy of the order directing such delivery to be left with him; and also a receipt and undertaking as above: which are usually written at the foot of the copy of the order; Dan. Pr. 36.

E. F., esquire, the Clerk of Records and Writs, the bond as security for costs therein mentioned.

And we hereby undertake to save harmless and indemnify the said E. F. against the costs of, or relating to, any proceedings which may be taken in his name against C. D., the obligor in the said bond, to recover the costs thereby conditioned to be paid; and which costs have been taxed by the Taxing Master at the sum of £—— [*or as may be*].

A. B., of [*Signature, residence and addition, of the person on whose behalf the order for delivery out of the bond has been obtained*].

G. H., of [*place of business*], solicitor for the said A. B.

Witness to the signatures of the said A. B., and G. H., }
F. A., of [*residence and addition*].

1830.

Summons for payment of costs out of security fund (*b*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant A. B. [*or as may be*]:

[*If fund invested in stock, say:*] that so much of the £—— consolidated £3 per cent. annuities [*or as may be*] in Court to the credit of [*Title of cause or matter, reference to the record and title of account as in the Paymaster-General's voluntary certificate*] as will raise £—— cash, the costs certified by the Taxing Master's certificate dated the —— of ——, 187—, and by the order dated the —— day of ——, 187—, directed to be paid to the applicant, together with the applicant's costs of this application: to be ascertained by the Chief Clerk: may be sold; and that the money to arise by such sale may be paid to Mr. G. H., the applicant's solicitor.

[*Or, if fund in cash, say:*] that out of the £——, cash in Court to the credit of [*&c., as above*], £——, the costs [*&c., as above to* Chief Clerk], may be paid to Mr. G. H., the applicant's solicitor.

(*b*) As to the mode of obtaining a payment out of Court, see *post*, note (*b*) to No. 2030; as to the mode of effecting a sale of a fund in Court, see *post*, note (*ff*) to No. 2035.

CHAPTER XXX.

ARREST OF DEFENDANT ON MESNE PROCESS.

Section I.—The Writ Ne Exeat Regno (*a*).

1831.

That Her Majesty's writ of *ne exeat regno* may issue out of, and under the seal of, this honourable Court, to restrain the defendant C. D. from departing out of the jurisdiction of this honourable Court.

Indorsement of claim of writ on writ of summons (*b*).

1832.

Formal parts : see ante No. 1570.

To move on behalf of the plaintiff, that a writ or writs of *ne exeat regno* may issue against the defendant C. D. ; to be marked for security in £——.

An affidavit in support accompanies (*d*).

Motion paper for the writ (*c*).

1833.

Formal parts : see ante No. 881.

on the part of the plaintiff, that a writ or writs of *ne exeat regno* may issue against the defendant C. D.

Summons for the writ, in a summons cause (*e*).

(*a*) As to this writ, see generally, Dan. Pr. 1548—1562. As to when the writ will be issued, see *Ibid.*, 1548—1554 ; how granted, *Ibid.*, 1554—1558 ; how executed, *Ibid.*, 1558—1559 ; and how discharged, *Ibid.*, 1559—1562.

(*b*) See Dan. Pr. 1553.

(*c*) *Ibid.*, 1554. For orders in like case, see *Binks* v. *Binks*, M. R. 24 Aug. 1866, Reg. Lib. A. 2151 ; *Other* v. *Smurthwaite*, V.-C. W. 27 Nov. 1866, Reg. Lib. B. 2299 ; and see Seton, ed. 4, p. 315, No. 1.

(*d*) If the defendant has not appeared, the Record and Writ Clerk's certificate of the issuing of the writ will be required ; see Dan. Pr. 1557.

(*e*) See Dan. Pr. 1554, note (*n*).

1834.

Affidavit in support of application for the writ (*f*).

In the High Court of Justice,
Chancery Division.
[*Title of the cause, and reference to the record.*]

I, A. B., of [*residence and addition*], the above-named plaintiff, make oath and say, as follows:

1. [*State, concisely, the institution and object of the action or other proceeding; as thus:*] This action was commenced by me on the —— day of ——, 187—, against the above-named defendant C. D., to obtain an account of all moneys received by the said defendant for me, or on my account, or for my use, as my agent in the management of my estate called E., in the county of ——, and of the application of such moneys, and for payment by the said defendant to me of what, on taking such account, shall be found due from him to me.

2. [*State the existence of a debt due from the defendant; as thus:*] The two accounts now produced and shown to me, and marked respectively F. and G. (*g*), have been rendered to me by the said defendant, and purport to be his accounts as such agent as aforesaid. It appears by the said accounts that the said defendant is indebted to me in the sum of £——, on balance thereof. I have investigated the said accounts, and I positively say that [*Or*, and to the best of my belief] the said defendant C. D. is now justly and truly indebted to me in the sum of £——, and upwards, on the balance of the said accounts [*or as may be*].

3. [*Show defendant's intention to go abroad; and deponent's means of knowledge.*]

4. From the facts aforesaid, and for the reasons hereinbefore stated, I verily believe that the said defendant C. D., unless he be forthwith apprehended, will depart out of the jurisdiction of this honourable Court; and that the debt due to me as aforesaid from the said defendant will be in danger of being lost to me by the said defendant quitting the said jurisdiction.

Sworn [*&c.: see ante* No. 696].

(*f*) See Dan. Pr. 1557. As to when an affidavit is necessary, the person to make it, and its material contents, see *Ibid.*, 1555—1557. In case of an *ex parte* application for the writ, the party making the application for the writ must furnish copies of the affidavits upon which it is granted, upon payment of the proper charges, immediately upon the receipt of an application for such copies, and an undertaking to pay the proper charges, or within such time as may be specified in such application, or as may have been directed by the Court; R. S. C. (Costs), Ord. V. 10.

(*g*) Exhibit same. For form of memorandum of exhibit, see *ante* No. 723.

1835.
Undertaking as to damages on behalf of infants (*h*).

[*Short title.*]

I undertake to pay any sum which this Court may hereafter direct, by way of damages to the defendant C. D., by reason of a writ of *ne exeat regno* being issued against him at the instance of the plaintiff.

Dated this —— day of ——, 187—.

X. Y., the plaintiff's next friend.

1836.
Præcipe for the writ (*i*).

In the High Court of Justice,
Chancery Division.

[*Reference to the record.*]

A. v. B. } Seal a writ of *ne exeat regno*, directed to the Sheriff of Anglesey [*or as may be: see ante* No. 364], against the defendant C. D.

Security in the sum of £——.

Order [*Directing the writ to issue*] dated —— day of ——, 187—.

Dated —— day of ——, 187—.

[*Name, &c., of solicitor or party issuing the writ: see ante* No. 92.]

1837.
General form of the writ (*j*).

[*Proceed as in* No. 1278 *ante, to* "greeting;" *and continue thus:*]

Whereas it is represented unto us, in our High Court of Justice, on the part of A. B., complainant, against C. D., defendant, amongst other things, that he the said defendant is greatly indebted to the said complainant, and designs quickly to go into parts beyond the seas: as by oath made in that behalf appears: which tends to the great prejudice and damage of the said complainant; Therefore, in order to prevent this injustice, we do hereby command you, that you do, without delay, cause the said C. D. personally to come before you, and give sufficient bail or security, in the sum of —— [*Amount mentioned in the order for the writ*], that he the said C. D. will not go, or attempt to go, into parts beyond the seas,

(*h*) See Dan. Pr. 1557. The undertaking is entered and signed in the Registrar's book; *Ibid.*

(*i*) See Dan. Pr. 1557. The order must be produced at the time the writ is presented for sealing; *Ibid.*

(*j*) See Dan. Pr. 1557. The writ must be engrossed on parchment; on issuing it, a fee is payable of 10*s.* on the higher scale, and 5*s.* on the lower scale, by means of a stamp impressed on the *præcipe*; Ord. as to Court Fees, Oct., 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522. As to the delivery, execution, and return of the writ, see Dan. Pr. 390, *et seq.*, 1558, 1559.

without leave of our said Court. And in case the said C. D. shall refuse to give such bail or security, then you are to commit him, the said C. D., to our next prison: there to be kept in safe custody until he shall do it of his own accord. And when you shall have taken such security, you are forthwith to make and return a certificate thereof to our said High Court of Justice, distinctly and plainly under your seal, together with this writ.

Witness [*&c.: Conclude as in* No. 1278 *ante*].

1838.

Indorsement on the writ (*k*).

Take security in the sum of [*State in words at length the sum mentioned in the order*].

[*Name, &c., of solicitor or party issuing the writ: see ante* Nos. 94, 95.]

1839.

Bond to the sheriff in pursuance of writ (*l*).

Know all men by these presents that we C. D. of [*address and description*], E. F. of, *&c.*, and G. H. of, *&c.*, are jointly and severally held and firmly bound to X. Y., esquire, sheriff of the county of ——, in the sum of £—, of good and lawful money of Great Britain, to be paid to the said X. Y., his certain attorney, executors, administrators, or assigns: for which payment to be well and faithfully made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents sealed with our seals. Dated this —— day of ——, 187—.

Whereas by a writ of *ne exeat regno*, dated the —— day of ——, 187—, issued out of Her Majesty's High Court of Justice, in a certain action there depending, wherein A. B. is plaintiff, and the said C. D. is defendant, to the said sheriff directed and delivered, the said sheriff was commanded without delay to cause the said C. D. to come before him and give sufficient bail or security in the sum of £——, that he the said C. D. will not go or attempt to go into parts beyond the seas, without the leave of the said High Court of Justice.

Now the condition of the above written obligation is such that if the above bounden C. D. shall not go, or attempt to go, into parts beyond the seas or into Scotland, without the leave of Her

(*k*) See Dan. Pr. 1557.
(*l*) See Dan. Pr. 1559.

Majesty's High Court of Justice, then the above written obligation is to be void, or else to remain in full force and virtue.

C. D. [L. S.]
E. F. [L. S.]
G. H. [L. S.]

Signed, sealed, and delivered by the above-bounden C. D., E. F., and G. H. in the presence of

L. M. of [*Residence and addition*].

1840.
Notice of motion for the discharge of the writ (*n*).

Formal parts : see ante No. 1571.

on the part of the defendant C. D. :

1. That the writ of *ne exeat regno* issued against him, pursuant to the order dated the —— day of ——, 187—, and the said order, may be discharged with costs, including the costs of this application ; and that the plaintiff may be ordered to pay such costs to the said defendant.

2. That the bond given by the said defendant to the Sheriff of ——, pursuant to the said order and writ, may be delivered up to be cancelled.

3. That an inquiry may be made what damages have been sustained by the said defendant by reason of the said order having been made (*o*).

4. That the plaintiff may be ordered, pursuant to his undertaking contained in the said order, to pay to the said defendant, within (one month) after the date of the Chief Clerks' certificate of the result of such inquiry, what shall be thereby certified in respect of such damages.

(*n*) See Dan. Pr. 1559. Where a defendant claims damages in respect of a writ of *ne exeat regno*, alleged to have been improperly issued against him, he should move to discharge the writ before the hearing ; otherwise, he will be taken to have submitted to it ; *Lees* v. *Patterson*, 7 Ch. D. 866. For order in like case, see *Sichel* v. *Raphael*, V.-C. W. 22 March, 1861, Reg. Lib. B. 815 ; *Other* v. *Smurthwaite*, V.-C. W. 13 Dec., 1866, Reg. Lib. B. 2644 ; Seton, ed. 4, 316, No. 3.

(*o*) See Dan. Pr. 1561.

Section II.—Arrest under the Debtors' Act, 1869, sec. 6 (*p*).

1841.

Motion paper or summons for order to arrest (*q*).

Formal parts: see ante No. 1570 *or* No. 881.

on the part of the plaintiff, that the defendant may be arrested and imprisoned for six months from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of £—— (*r*), by way of security, or shall give to the plaintiff a bond executed by him and two (*s*) sufficient sureties in the penalty of £—— (*t*), or some other security satisfactory to the plaintiff, that the said defendant will not go out of England without the leave of this honourable Court.

[*Where the action is for a penalty, or for a sum in the nature of a penalty, other than a penalty in respect of any contract, instead of the above, say:*] that any sum recovered against the defendant in this action shall be paid, or that the said defendant shall be rendered to prison.

And that the Sheriff of —— may be ordered to take the said defendant, within one calendar month from the date of the order, including the day of such date for the purpose aforesaid, if he shall be found in the said Sheriff's bailiwick; and that the costs of this application may be costs in the action (*u*).

(*p*) Where the plaintiff in any action in which, if brought prior to the 1st of Jan. 1870, the defendant would have been liable to arrest, proves at any time before final judgment, on evidence by oath to the satisfaction of a Judge, that the plaintiff has good cause of action against the defendant to the amount of £50 or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, the Judge may order the defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has previously given security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the Court; The Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 6; as to the procedure under this section, see Reg. Gen. M. T. 1869, rules 6 to 11.

(*q*) The application is *ex parte*; Reg. Gen. M. T. 1869, rule 6; for form of affidavit in support, see *post* No. 1842. For form of order, see Reg. Gen. M. T. 1869, Sched. form C. Concurrent orders may be issued for arrest in different counties; *Ibid.*, rule 6. As to the sheriff's fees, see *Ibid.*, rule 6. As to the delivery of an office copy of the order to the sheriff, and the execution of the order by him, see note (*e*) to No. 1396 *ante*.

(*r*) The amount of the security must not exceed the amount claimed in the action; Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 6; but in an action for a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract, the amount must be sufficient to include the probable costs of the action; see note to form C. in the Sched. to Reg. Gen. M. T. 1869.

(*s*) With the leave of the Judge more than two sureties may be required; Reg. Gen. M. T. 1869, rule 7.

(*t*) See note (*r*), *supra*.

(*u*) See Reg. Gen. M. T. 1869, rule 9.

1842. Affidavit in support (*v*).

Formal parts: see ante No. 693.

1. [*Here prove a good cause of action to the amount of* £50, *or upwards* (*w*); *as thus:*] The above named defendant C. D., is justly and truly indebted to me in the sum of £——, for goods sold and delivered by me to the said C. D. [*or as may be*].

2. [*Prove facts causing a probable belief that the defendant is about to quit England.*]

3. [*Show how the absence of the defendant will prejudice the plaintiff in the prosecution of his action* (*x*).]

4. [*Show means of knowledge.*]

1843. Indorsement on order delivered to the sheriff (*y*).

[*Same as* No. 94 *or* No. 95 *ante.*]

1844. Bond given by the defendant under the order (*z*).

[*Same as* No. 1839 *ante, except that the plaintiff, and not the sheriff, will be the obligee; the condition in the defeasance of the bond will be:* "if the above bounden C. D. shall not go out of England without the leave of Her Majesty's High Court of Justice;" *or, if the action is for a penalty, or sum in the nature of a penalty* (*other than a penalty in respect of any contract*), *then:* "if any sum recovered in the said action against the above bounden C. D. shall be paid, or the person of the said C. D. shall be rendered to prison."]

1845. Notice of names of sureties and of form of bond (*a*).

Formal parts: see ante No. 21.

Take notice that the defendant proposes E. F. of [*address and description*], and G. H. of [*address and description*], as two

(*v*) As to the contents of this affidavit, see the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 6; *supra*, note (*p*) to No. 1841.

(*w*) The existence of a good cause of action to the extent of £50 must be positively and explicitly averred, the language of the affidavit being construed with some strictness.

(*x*) This paragraph is not necessary where the action is for a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract; Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 6.

(*y*) See Reg. Gen. M. T. 1869, rule 6.

(*z*) The security to be given by the defendant may be a deposit in Court of the amount mentioned in the Order, or a bond to the plaintiff by the defendant and sureties as mentioned in the Order, or with the plaintiff's consent, any other form of security; Reg. Gen. M. T. 1869, rule 7.

(*a*) See Reg. Gen. M. T. 1869, rule 7.

sufficient sureties to enter into a bond pursuant to the order dated —— day of ——, 187—, and that the defendant proposes, pursuant to the said order, to execute a bond, with the said E. F. and G. H., as his sureties, in the form hereunto annexed and marked A.

1846.

Notice of objection to sureties or bond (*b*).

Formal parts: see ante No. 21.

Take notice that the plaintiff objects to E. F. in your notice, dated the —— day of ——, 187—, named, as a surety to enter into the bond therein mentioned [*Or*, objects to the form of bond referred to in your notice, dated the —— day of ——, 187—], and that the following are the particulars of such objection: [*Here specify the objections*].

1847.

Summons to determine sufficiency of security (*c*).

Formal parts: see ante No. 881.

on the part of the plaintiff, to determine the sufficiency of the security proposed to be given under the order dated the —— day of ——, 187—, and that the defendant may be ordered to pay the costs of this application.

1848.

Certificate that security has been given (*d*).

[*Proceed as in* No. 1398 *ante, down to* "above action;" *and continue:*] until he shall give security that he will not go out of England without the leave of the Court [*Or*, that any sum recovered against him in this action shall be paid, or that he shall be rendered to prison], has given such security.

Dated —— day of ——, 187—.

X. Y., Solicitor for the said A. B.

[*Or*, A. B.

Signed by the said A. B. in the presence of

X. Y., plaintiff's solicitor.]

(*b*) See Reg. Gen. M. T. 1869, rule 7. The notice of objection must be given within four days after receipt of the defendants' notice; *Ibid.*

(*c*) See Reg. Gen. M. T. 1869, rule 7. Unless the plaintiff takes out this summons within four days after giving notice of objection, the security will be deemed sufficient; *Ibid.*

(*d*) See Reg. Gen. M. T. 1869, rule 10.

1849.

Notice of motion or summons for liberty to put bond in suit (*e*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff, that he may be at liberty to put in suit the bond dated the —— day of ——, 187—, entered into by the defendant C. D., together with E. F., and G. H., as his sureties, pursuant to the order dated the —— day of ——, 187—.

1850.

Notice of motion to discharge order (*f*).

Formal parts: see ante No. 1571.

on the part of the defendant C. D., that the order made in this action, dated the —— day of ——, 187—, whereby it was ordered that [*Recite the order*], may be discharged;

[*If the defendant is still in custody, add:*] and that the defendant may be discharged out of the custody of the Sheriff of ——, under the said order;

[*If the defendant has given a bond, add:*] and that the bond given by the said defendant to the said plaintiff, pursuant to the said order, may be delivered up to be cancelled;

[*If the defendant has paid money into Court, add:*] and that the sum of £——, cash in Court, on the credit of this action may be ordered to be paid out to the defendant C. D.;

and that the plaintiff may be ordered to pay to the defendant his cost of and occasioned by this application.

(*e*) See Reg. Gen. M. T. 1869, rule 8. The application should be supported by an affidavit showing that the bond is forfeited.

(*f*) See Reg. Gen. M. T. 1869, rule 6.

CHAPTER XXXI.

TRANSFER AND REMOVAL OF CAUSES AND MATTERS.

SECTION I.—TRANSFER FROM ONE DIVISION TO ANOTHER OF THE HIGH COURT, OR FROM ONE JUDGE TO ANOTHER OF THE CHANCERY DIVISION (*a*).

1851. Notice of motion or summons for transfer of cause or matter commenced in wrong division (*b*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the defendant C. D. [*or as may be*], that this cause [*Or*, matter] may be transferred to the —— division of this honourable Court

[*If the application is for a transfer to the Chancery Division* (*c*) *add:*] and may be assigned to the Master of the Rolls [*or as may be*] [And

(*a*) As to the assignment of causes and matters commenced in the High Court of Justice, to one of the divisions thereof, see Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), sec. 11; R. S. C. Ord. V. 4. As to the assignment of causes and matters commenced in the Chancery division of the High Court, to one of the Judges thereof, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 33, 42; R. S. C. Ord. V. 4, 4*a* (R. S. C. June, 1877); and see Ord. of the L. C. of June, 1877.

(*b*) As to the assignment of particular causes and matters to particular divisions of the High Court, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 34. If any plaintiff or petitioner assign his cause or matter to any division of the Court to which the same ought not to be assigned, the Court, or any Judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the Court to which the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party, in any such cause or matter, and all orders made therein by the Court, or any Judge thereof, before any such transfer, shall be valid and effectual to all intents and purposes, in the same manner as if the same respectively had been taken and made in the proper division of the Court, to which such cause or matter ought to have been assigned; Sup. Cot. Jud. Act, 1875 (38 & 39 Vict. c. 77), sec. 11, subsec. 2. In this case, the consent of the President of the Division from or to which the cause or matter is transferred, does not seem to be required. The application should be supported by an affidavit stating the cause of the action.

(*c*) An action transferred to the Chancery division must, by the order directing the transfer, be directed to be assigned to one of the Judges of such Division to be named in the order; R. S. C. Ord. LI. 3.

And that the plaintiff may be ordered to pay to the applicant his costs of and occasioned by this application.

1852.
Petition for transfer from one division to another (*d*).

Formal parts: see ante No. 1578.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. [*State the institution of the action or other proceeding; as thus:*] On the —— day of ——, 187—, your petitioner [*Or*, the plaintiff] commenced this action in the —— Division of this honourable Court.

[*If the proceeding was commenced in the Chancery Division, add:*] and assigned the same to the Master of the Rolls [*or as may be*].

2. Your petitioner is desirous that this action should be transferred to the —— Division of this honourable Court

[*If the action is to be transferred to the Chancery Division* (*e*), *add:*] and be assigned to the Vice-Chancellor Malins [*or as may be*]

for the purpose of being consolidated with the action of F. and G., now pending in the said division [*Or*, before the said Vice-Chancellor; *or as may be*].

Your petitioner therefore humbly prays, that this action may be transferred to the —— Division of this honourable Court.

[*If the action is to be transferred to the Chancery Division* (*e*), *add:*] and may be assigned to the V.-C. Malins [*or as may be*]

if the president of the said —— Division shall consent thereto.

And your petitioner will ever pray, &c.

(*d*) Any action or actions may be transferred from one division to another of the High Court, or from one Judge to another of the Chancery division, by an order of the Lord Chancellor; but no transfer may be made from or to any division, without the consent of the President of the Division; R. S. C. Ord. LI. 1. Where all parties consent, the Lord Chancellor will direct the transfer on a written application, accompanied by the written consent of all parties; *Mem.*, 1 Ch. D. 41; if all the parties do not consent, an application upon notice given must be made to the Lord Chancellor in Court. For form of notice of motion, see *post* No. 1855. An order for transfer from one division to another is not effectual, until the necessary consents of the presidents of divisions have been obtained thereto; *Humphreys* v. *Edwards*, 45 L. J. Ch. 112.

(*e*) See note (*c*) to No. 1851 *ante*.

1853.
Petition for transfer from one judge to another of the Chancery Division (*f*).

Formal parts: see ante No. 1578.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. [*State the institution in the Chancery Division of the action or other proceeding, as in paragraph* 1 *of* No. 1852 *ante.*]

2. Your petitioner is desirous that this action should be transferred to the Vice-Chancellor Malins [*or as may be*], for the purpose of being consolidated with the action of F. and G., now pending before the said Vice-Chancellor [*or as may be*].

Your petitioner therefore humbly prays that this action may be transferred to the Vice-Chancellor Malins [*or as may be*], and when so transferred may be considered as an action originally assigned to the said Vice-Chancellor.

And your petitioner will ever pray, &c.

1854.
Consent to petition.

[*Same as* No. 1577 *ante.*]

1855.
Notice of motion for transfer from one division or judge to another (*g*).

In the High Court of Justice.

[*Title of cause or matter, and reference to the record.*]

Take notice that the Lord High Chancellor of Great Britain will be moved on —— day, the —— day of ——, 187—, or so soon thereafter as counsel can be heard, by Mr. A., of counsel on behalf of the above-named plaintiff [*or as may be*], that this action [*Continue as in prayer of* No. 1852 *or* No. 1853 *ante*].

(*f*) See R. S. C. Ord. LI. 1; *Mem.*, 1 Ch. D. 41; and note (*d*) to No. 1852. For order in like case, see Seton, ed. 4, 318, No. 1. For form of notice of motion for like order, see *post* No. 1855.

(*g*) R. S. C. Ord. LI. 1; *Mem.*, 1 Ch. D. 41; and note (*d*) to No. 1852 *ante.*

1856. Notice of motion or summons for the transfer of an action (*h*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the plaintiff, that this action may be transferred to the —— Division of this honourable Court
[*If the action is to be transferred to the Chancery Division* (*j*), *add:*] and may be assigned to the Vice-Chancellor Malins [*or as may be*],
if the president of the said division shall consent thereto.

1857. Consent of President of Chancery Division to transfer to that division (*k*).

The Lord Chancellor, as President of the Chancery Division of the High Court of Justice, consents to the transfer to that division of this action.

[*Signature of Principal Secretary.*]

1858. Motion paper for transfer where an order for a winding up or administration has been made (*l*).

Formal parts: see ante No. 1570.
To move on behalf of the plaintiff [*or as may be*], that the action of F. *v.* D., 1877, F. 100, now pending in the (Queen's

(*h*) Any action may, at any stage, be transferred from one division to another by an order made by the Court, or any Judge of the Division to which the action is assigned: but no such transfer is to be made without the consent of the President of the Division to which the action is proposed to be transferred; R. S. C. Ord. LI. 2. This rule has reference only to a transfer from one division to another, and not to a transfer from one Judge to another of the same division; *Chapman* v. *Real Property Trust, Limited*, 7 Ch. D. 732. The application must be on notice; *Humphreys* v. *Edwards*, 45 L. J. Ch. 112; and may be either to the Court or in Chambers; *Hillman* v. *Mayhew*, 1 Ex. D. 132. The order to transfer is not effectual until the consent is obtained of the President of the Division to which the action is to be transferred; *Humphreys* v. *Edwards*, *ubi supra*. For orders under this rule, see *Humphreys* v. *Edwards*, 45 L. J. Ch. 112; *Hillman* v. *Mayhew*, 1 Ex. D. 132; *Holloway* v. *Yorke*, 2 Ex. D. 333; *Evans* v. *Debenham*, 24 W. R. 900; *Holmes* v. *Harvey*, 25 W. R. 80. As to obtaining the consent of the Lord Chancellor, as president of the Chancery division, to a transfer to that division, see *post* No. 1857, and note (*k*) thereto.

(*j*) See note (*c*) to No. 1851 *ante*.

(*k*) The consent of the Lord Chancellor to transfer will be endorsed on the order to transfer by his secretary, and stamped with his official stamp; Seton, ed. 4, 319, 320.

(*l*) When an order has been made by any Judge of the Chancery division for the winding up of any company under the Companies Acts, 1862 and 1869, or for the administration of the assets of any testator or intestate, the Judge before whom such winding up or administration is pending, has power, without any further consent, to order the transfer to such Judge of any action pending in any other division, brought or continued by or against such company, or by or against the executors or administrators of the testator or intes-

Bench) Division of this honourable Court against C. D., the exe cutor of the will of the above-named X. Y., deceased, may b transferred to the Chancery Division of this honourable Court and assigned to the Master of the Rolls [*or as may be*] (*m*).

SECTION II.—TRANSFER FROM A DISTRICT REGISTRY TO LONDON, OR FROM LONDON TO A DISTRICT REGISTRY (*n*).

1859. Notice by defendant to remove an action proceeding in a District Registry to London (*o*).

[*Same as* No. 326 *ante.*]

1860. Notice of motion or summons that action may proceed in District Registry, notwithstanding notice, or notwithstanding appearance in London (*p*).

[*Same as* No. 401 *ante.*]

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tate whose assets are being so administered, as the case may be; R. S. C Ord. LI. 2*a* (R. S. C. June, 1876, rule 18). An application for a transfe under this rule should be made *ex parte*; *Field* v. *Field*, W. N. (1877) 98 *Whitaker* v. *Robinson*, W. N. (1877) 201.

(*m*) See note (*c*) to No. 1851 *ante.*

(*n*) If a sole defendant appears in the district registry, or all the defendant appear in the district registry, or all the defendants who appear, appear i the district registry, and the others make default in appearance, the actio will (subject to the power of transfer) proceed in the district registry; R. S. C Ord. XII. 4. If the defendant appears, or any of the defendants appear, i London, the action will (subject to the power of transfer) proceed in London R. S. C. Ord. XII. 5. As to the transfer of an action proceeding in a distric registry to London, or of an action proceeding in London to a district registry see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), sec. 65; R. S. C. Ord. XII 5; R. S. C. Ord. XXXV. 11, 12, 13.

(*o*) See note (*f*) to No. 326 *ante.*

(*p*) See note (*w*) to No. 401 *ante.*

1861. Notice of motion or summons to remove an action proceeding in a District Registry to London (*q*).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the plaintiff [*or as may be*], that this action may be removed from the District Registry at ——, to London, and may proceed in London accordingly.

1862. Notice of motion or summons to remove an action proceeding in London to a District Registry (*r*).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the plaintiff [*or as may be*], that this action may be removed from London to the District Registry at ——, and may proceed in the District Registry at —— accordingly.

(*q*) Any party to an action, in which a writ of summons has been issued from a district registry, may, at any time apply, in the prescribed manner, to the Court, or to a Judge in Chambers of the division of the Court to which the action is assigned, to remove the proceedings from such district registry into the proper office of the High Court ; and the Court or Judge may, if it be thought fit, grant such application, and in such case, the proceedings and such original documents, if any, as may be filed therein must, upon receipt of such order, be transmitted by the District Registrar to the proper office of the High Court, and the action will thenceforth proceed in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London ; or the Court or Judge, if it be thought right, may direct that the proceedings do continue to be taken in such District Registry ; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), sec. 65. In any case not provided for by the R. S. C. Ord. XXXV. 11, 12, see note (*f*) to No. 326 *ante*, any party to an action proceeding in a district registry may apply to the Court or a Judge, or to the district registrar, for an order to remove the action from the district registry to London, and such Court, Judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just ; R. S. C. Ord. XXXV. 13. For order in like case, see Seton, ed. 4, 319, No. 5. Whenever any proceedings are removed from a district registry to London, the district registrar must transmit to the proper officer of the High Court all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action ; R. S. C. Ord. XXXV. 14.

(*r*) Any party to an action proceeding in London may apply to the Court or a Judge for an order to remove the action from London to any district registry, and such Court or Judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just ; R. S. C. Ord. XXXV. 13.

Section III.—Removal of Causes and Matters from the High Court of Justice to an Inferior Court.

1863.

Summons to try action of contract in the County Court, where claim endorsed on writ does not exceed £50 (*a*).

Formal parts: see ante No. 881.

on the part of the defendant A. B., that this action may be tried in the County Court of ——, holden at —— (*b*).

(*a*) By the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 67, the provisions contained in the 7th section of the County Courts Act, 1867, are to apply to all actions commenced or pending in the High Court of Justice, in which any relief is sought which can be given in a County Court. By the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 7, where, in any action of contract brought or commenced in any of the superior Courts of common law, the claim indorsed on the writ does not exceed £50, or where such claim, though it originally exceeded £50, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding £50, the defendant in the action may, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, apply to a Judge at Chambers for a summons to the plaintiff to show cause why the action should not be tried in the County Court, or one of the County Courts, in which the action might have been commenced, and on the hearing of such summons the Judge shall, unless there be good cause to the contrary, order such action to be tried accordingly. This section does not apply where the payment, whereby the amount in dispute is reduced to a sum not exceeding £50, is made after action brought; *Osborne* v. *Homburg*, 1 Exch. D. 48; *Foster* v. *Usherwood*, 3 Exch. D. 1 (C. A.). The action is not actually transferred to the County Court until the writ of summons and order are lodged with the Registrar of the County Court; *Welply* v. *Buhl*, 3 Q. B. D. 80; affirmed on appeal, 3 Q. B. D. 253; but when the writ and order are lodged with the Registrar of the County Court, the effect is that the action and all proceedings therein are to be heard and taken in the County Court named in the order, as if the action had been originally commenced in that County Court; see the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 7. As to the proceedings in the County Court after the order is made, see the County Courts Act, 1867, s. 7; the County Court Rules, 1875, Ord. XX. rules 1—3. As to the difference between an order under the County Courts Act, 1867, s. 7, and an order under the County Courts Act, 1856 (19 & 20 Vict. c. 108), s. 26 (*supra*, note (*a*) at p. 444), see Davis' County Courts Practice, p. 427.

(*b*) This must be the County Court, or one of the County Courts in which the action might have been commenced; 30 & 31 Vict. c. 142, s. 7; *supra*, note (*a*). As to the County Court in which a plaintiff may commence his action, see 30 & 31 Vict. c. 142, s. 1.

1864. Affidavit in support.

Formal parts: see ante No. 693.

1. The writ of summons in this action was served upon me on the —— day of ——, 187—. The paper writing now produced and shown to me, and marked A. (*c*), is the copy served upon me of the said writ of summons.

2. The whole [*Or*, A part] of the demand of the plaintiff in this action is *bonâ fide* contested by me.

1865. Summons to remit action of tort for trial before a County Court (*d*).

[*Same as* No. 1807 *ante.*]

1866. Affidavit in support.

[*Same as* No. 1808 *ante.*]

(*c*) For form of memorandum of exhibit, see *ante* No. 723.

(*d*) See the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 67; the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 10; and note (*g*) at p. 967, *ante*. When an order is made under this section, the action is not actually transferred to the County Court until the writ of summons and the order are lodged with the Registrar of the County Court; *Welply* v. *Buhl*, 3 Q. B. D. 80; affirmed on appeal, 3 Q. B. D. 253; but when the writ and order are lodged with the Registrar, the effect is to transfer the action to the County Court altogether; and the County Court named in the order has all the same powers and jurisdiction with respect to the action, as if both parties had agreed, by a memorandum signed by them, that such County Court should have power to try the action, and the same had been commenced by plaint in such County Court; 30 & 31 Vict. c. 142, s. 10. As to the proceedings in the County Court after the order is made, see 30 & 31 Vict. c. 142, s. 10; the County Courts Rules, 1875, Ord. XX. rules 1 to 4.

1867.
Summons to transfer an equity action or matter to a County Court (*e*).

Formal parts: see ante No. 881.

on the part of the defendant, that this action [*Or*, matter] may be transferred to the County Court of ——, holden at —— (*f*).

1868.
Affidavit in support.

Formal parts: see ante No. 693.

1. The plaintiff's claim in this action is for [*Here state the plaintiff's claim as indorsed on the writ, and show that the action is one which might have been commenced in a County Court*].

2. [*State the special reasons for having the action transferred* (*g*).]

3. [*Show means of knowledge.*]

(*e*) By the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 67, the provisions contained in the eighth section of the County Courts Act, 1867, are to apply to all actions commenced or pending in the High Court of Justice, in which any relief is sought which can be given in a County Court. By the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 8, where any suit or proceeding shall be pending in the High Court of Chancery which might have been commenced in a County Court, any of the parties thereto may apply, at Chambers, to the Judge to whose Court the said suit or proceeding shall be attached, to have the same transferred to the County Court, or one of the County Courts, in which the same might have been commenced, and such Judge shall have power, upon such application, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred. As to the jurisdiction in equity of the County Courts, see the County Courts Act, 1865 (28 & 29 Vict. c. 99), s. 1; the County Courts Act, 1867 (30 & 31 Vict. c. 142), ss. 9, 24, 25; the Partition Act, 1868 (31 & 32 Vict. c. 40), s. 12; and Dan. Pr. 1970, *seq.* The High Court has concurrent jurisdiction with the County Court in matters within the equitable jurisdiction of the latter; *Scotto* v. *Heritage*, L. R. 3 Eq. 212; *Brown* v. *Rye*, L. R. 17 Eq. 343; and the Court will not order a transfer in the absence of any special reason; *Picard* v. *Hine*, 18 L. T. N. S. 705. For form of order, see *Linford* v. *Gudgeon*, V.-C. S. at Chambers, 18 Mar. 1870, Reg. Lib. B. 693. As to the proceedings in the County Court after the order is made, see the County Courts Rules, 1875, Ord. XX. rules 1 to 3.

(*f*) This must be the County Court, or one of the County Courts, in which the proceeding might have been commenced; 30 & 31 Vict. c. 142, s. 8. As to the County Court in which a plaintiff may commence a proceeding, see 30 & 31 Vict. c. 142, s. 1.

(*g*) See *Picard* v. *Hine*, 18 L. T. N. S. 705; and note (*e*) to No. 1867, *ante*.

1869. Summons for the re-transfer of an action or matter to the County Court (*h*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be*], that this action [*Or*, matter] which was instituted in the County Court of ——, holden at ——, and which was transferred to this Court by order dated the —— day of ——, 18—, may be re-transferred to the said County Court of ——, holden at ——, and be carried on and prosecuted in the said County Court.

[*If so, add :*] notwithstanding the subject-matter thereof exceeds the limit, in point of amount, to which the jurisdiction of the County Courts is limited by the 28 & 29 Vict. c. 99 (*j*).

Section IV.—Removal of Causes and Matters from an Inferior Court to the High Court of Justice (*k*).

(1.) *From a County Court* (*l*).

1870. Motion paper or summons to transfer cause or matter from a County Court (*m*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the Act 28 & 29 Vict. c. 99 [*Or*, In the matter of the Supreme Court of Judicature Act, 1873].

And in the matter of [*State the proceeding in the County*

(*h*) See the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 8 ; *supra*, note (*e*) to No. 1867; for order in like case, see *Hallam* v. *Hand*, V.-C. K. at Chambers, 16 Nov. 1866, Reg. Lib. A. 2494 ; *Evans* v. *Hick*, Field, J., at Chambers, 22 Aug. 1876, Reg. Lib. A. 1627. It is not necessary to add a direction to the Record and Writ Clerks to return the papers ; *Hartley* v. *Barber*, V.-C. M., 23 Jan. 1873, Reg. Lib. A. 61.

(*j*) A Judge may order any cause or matter to be carried on and prosecuted in the County Court, notwithstanding an excess in the amount of the limit to which jurisdiction in the matter is given to the County Courts ; 28 & 29 Vict. c. 99, s. 9.

(*k*) As to the removal of causes from an inferior Court for the purpose of having execution of a judgment or order made therein, see *ante* Nos. 1411 to 1431. It may be observed that appeals from inferior Courts do not lie to the Chancery Division ; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 34, subs. 2, and s. 45 ; R. S. C. Ord. LVIII. 19 (R. S. C. Dec. 1876, rule 11).

(*l*) A cause or matter pending in a county Court may be removed to the High Court of Justice, either by an order of the Court ; see 28 & 29 Vict. c. 99, s. 3 ; 36 & 37 Vict. c. 66, s. 90 ; note (*m*) to No. 1870 *post* ; or by writ of *certiorari*, which can only issue by leave of the Court ; see 9 & 10 Vict. c. 95, s. 90 ; 13 & 14 Vict. c. 61, s. 16 ; 19 & 20 Vict. c. 108, s. 38 ; note (*o*) to No. 1871 *post*.

(*m*) By the statute 28 & 29 Vict. c. 99, s. 3, any one of the Vice-Chancellors (now, any Judge of the High Court ; 36 & 37 Vict. c. 66, ss. 16, 39), upon the application, at Chambers, of any party to any suit or matter pending in a County Court under that statute, has power then and there, or, if he think fit,

Court, as thus:] a plaint in the County Court of ——, holden at ——, between A. B., plaintiff, and C. D., defendant.

[*If the application is made by motion, say:*] To move on behalf of

[*If the application is made by summons, say:*] Let all parties [*&c.: proceed as in* No. 865 *ante, to* noon] on the hearing of an application on the part of

[*In either case proceed thus:*] the above-named A. B. [*Or*, C. D.] of [*residence and addition*], that the plaint now pending in the County Court of ——, holden at ——, against the above-named C. D., at the suit of the above-named A. B., may be transferred to the Chancery Division of this Court, and be assigned to the Vice-Chancellor Malins [*or as may be*] (*n*).

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after hearing a summons served upon the other party or parties, to transfer such suit or matter to the Chancery Division of the High Court of Justice (see 36 & 37 Vict. c. 66, s. 34, subs. 1), upon such terms, if any, as to security for costs or otherwise, as he may think fit. By the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 90, where, in any proceeding before an inferior Court having jurisdiction in equity, or at law and in equity, any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim is not to affect the competence, or the duty, of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer, is to be given to the defendant upon any such counter-claim; but in such case it is lawful for the High Court, or any division or Judge thereof, if it be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any division thereof; and in such case the record in such proceeding is to be transmitted by the Registrar, or other proper officer, of the inferior Court to the High Court; and the same is thenceforth to be continued and prosecuted in the High Court, as if it had been originally commenced therein. An application under 28 & 29 Vict. c. 99, s. 3, must be by summons; an application under 36 & 37 Vict. c. 66, s. 90, may be either by motion or summons. If the application is made by summons, it must be by originating summons, for the practice as to which, see *ante* Nos. 865—880, and notes thereto. In either case, it seems that it should, at least in the first instance, be *ex parte*. An application under the 28 & 29 Vict. c. 99, s. 3, should be supported by an affidavit showing circumstances rendering the transfer necessary or desirable; an application under the 36 & 37 Vict. c. 66, s. 90, should be supported by an affidavit stating the counter-claim, and showing that it involves matter beyond the jurisdiction of the Court. For orders under the 28 & 29 Vict. c. 99, s. 3, see *Re Leonards*, V.-C. S. at Chambers, 22 Nov. 1866, Reg. Lib. A. 2434; *Baker* v. *Wait*, L. R. 9 Eq. 103; *Birks* v. *Silverwood*, L. R. 14 Eq. 101; *Thomson* v. *Flinn*, L. R. 17 Eq. 415. As to the mode in which the record of the proceedings in the County Court is transmitted to the High Court, see County Courts Rules, 1875, Ord. XX. 7.

(*n*) See R. S. C. Ord. LI. 3; note (c) to No. 1851 *ante*.

1871.
Motion paper or summons for writ of *certiorari* to remove action from County Court (*o*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of a plaint in the County Court of ——, holden at —— (*p*).

[*If the application is made by motion, say:*] To move on behalf of

[*If the application is made by summons, say:*] Let all parties [*&c.: proceed as in* No. 865 *ante, to* noon] on the hearing of an application on the part of

[*In either case, proceed thus:*] the above-named A. B. [*Or*, C. D.], of [*residence and addition*], that a writ of *certiorari* may be ordered to issue, directed to the Judge of the County Court of ——, holden at ——, to certify and remove a plaint between A. B. and C. D., with all things touching the same, from the said County Court into the Chancery Division of this Honourable Court. And that the Clerks of Records and Writs may be ordered to receive and file the same. And that the said action, when removed, may be assigned to the Vice-Chancellor Malins [*or as may be*], and may be continued and prosecuted in this Court in

(*o*) By the 9 & 10 Vict. c. 95, s. 90, no plaint entered in any Court holden under that act is to be removed or removable from the said Court into any superior Court of record by any writ or process, unless the debt or damage claimed exceeds £5, and then only by leave of a Judge of a superior Court, in cases which appear to the Judge fit to be tried in a superior Court, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as the Judge shall think fit. By the 19 & 20 Vict. c. 108, s. 38, an action commenced in a County Court for a claim not exceeding £5, may be removed by *certiorari* into a superior Court, if such superior Court or a Judge thereof deem it desirable that the action should be tried therein; and if the party applying for the writ give security for the amount of the claim and the costs of the trial, not exceeding in all £100, and further assent to such terms, if any, as the superior Court or Judge may think fit to impose. The application for a *certiorari* may be made *ex parte;* and may be made either to the Court or at Chambers. When made at Chambers it must be by originating summons, for the practice as to which, see *ante* Nos. 865—880, and notes thereto. Where, on the hearing of an *ex parte* application, the Court or Judge directs an order or summons to show cause to be served, he may stay the proceedings in the County Court in the meantime; 19 & 20 Vict. c. 108, s. 40; as to the service of such order or summons, see *Ibid.* For form of affidavit in support of the application for a *certiorari*, see *post* No. 1872. The power to issue a *certiorari* to a County Court is not taken away by 13 & 14 Vict. c. 61, s. 16; *Parker* v. *Bristol and Exeter Railway Co.*, 6 Exch. 184; *Mungean* v. *Wheatley*, 6 Exch. 88; *Re Brookman* v. *Wenham*, 2 L. M. P. 233.

(*p*) In the Queen's Bench, Common Pleas and Exchequer Divisions, the application is entitled only in the Court, and not in any cause; Chitty's Arch. 1319; but in the Chancery Division it is usual to entitle the application in the mattter of the proceeding in the inferior Court; see Seton, ed. 4, 335.

the same manner as if it had been originally commenced therein and assigned to the said Judge (*q*).

1872.
Affidavit in support.

Title: see ante No. 1871 (*r*); *other formal parts: see ante* No. 693.

1. [*State the proceedings which have been had in the County Court.*]

2. The plaintiff's claim in the said action is for [*Here state the nature and particulars of the plaintiff's claim*].

3. [*State facts showing that it is desirable that the action should be tried in a superior Court; as thus:*] I am advised and verily believe that upon the trial of the said action several difficult questions of law are likely to arise, and, amongst others, the following: [*Here state the questions which are likely to arise, and verify the facts raising such questions*].

[*If the application is made by a defendant, add the following paragraph:*]

4. I have a good defence to the said action upon the merits, and this application is not made for the purpose of embarrassing or delaying the plaintiff, but *bonâ fide*, and for the purpose of obtaining a proper trial of the said action.

1873.
Præcipe for writ of *certiorari* (*s*).

[*Same as* No. 1413 *ante.*]

1874.
Writ of *certiorari* (*t*).

[*Same as* No. 1414 *ante, omitting the words:* "together with the record of the judgment thereon obtained in our said Court before you."]

(*q*) As the order for the *certiorari* to issue will not be made, under either the 9 & 10 Vict. c. 95, s. 90, or the 19 & 20 Vict. c. 108, s. 38, unless the Judge is satisfied that the action ought to be tried in the High Court, it seems proper to include in the application, an application that the action when removed may be retained and prosecuted in the High Court; by this means the expense of an application after the writ is returned, is saved.

(*r*) See note (*p*) to No. 1871 *ante.*

(*s*) As to the stamp to be impressed on the *præcipe*, see note (*d*) to No. 1413 *ante.*

(*t*) The writ should be engrossed on parchment. On issuing it, the order giving leave to issue it must be produced. As to the stamp payable on issuing it, see note (*d*) to No. 1413 *ante.* As to the person on whom the writ should be served, see note (*e*) to No. 1414 *ante.* Where obtained *ex parte* it should be served two clear days before the day fixed for hearing the cause in the County Court, otherwise the party obtaining it may be ordered to pay the costs of the day; 19 & 20 Vict. c. 108, s. 41. As to giving notice to the opposite party, see *Ibid.*; and note (*u*) to No. 1876 *post.* Service of the writ has the effect of suspending all proceedings in the inferior Court; Chitty's Arch. 1324.

[*Same as* No. 94 *or* No. 95 *ante.*]

1875. Indorsement on writ.

1876. Notice of having issued writ of *certiorari* (*u*).

Title of the proceeding in the County Court; other formal parts: see ante No. 21.

Take notice that, by virtue of an order dated the —— day of ——, 187—, a writ of *certiorari* was, on the —— day of ——, 187—, issued out of the High Court of Justice, directed to the Judge of the County Court of ——, holden at ——, commanding him to return into the Chancery Division of the said High Court of Justice, the plaint levied in this action, together with all things touching the same.

1877. Return to the writ (*v*).

[*For the formal parts of the return, see ante* No. 1416. *The body of the return should state the main proceedings in the County Court, down to the issuing of the writ of certiorari; see ante* No. 1416.]

1878. Summons that a suit or matter may be continued in the County Court (*w*).

[*Proceed as in form of summons, ante* No. 1870, *down to* may be; *and conclude thus:*] carried on and prosecuted in the said County Court, notwithstanding the subject-matter thereof exceeds the limit, in point of amount, to which the jurisdiction of the County Courts is limited by the stat. 28 & 29 Vict. c. 99.

(*u*) A party who has issued a writ of *certiorari* to the Judge of a County Court *ex parte*, must give notice thereof to the opposite party two clear days before the day fixed for hearing the cause in the County Court, otherwise he may be ordered to pay the costs of the day; 19 & 20 Vict. c. 108, s. 41.

(*v*) As to the mode of compelling a return, see note (*f*) to No. 1416 *ante*. As to the mode of returning the writ, see *Ibid.* When the writ has been returned, and the action thus removed into the superior Court, the defendant should enter an appearance in the High Court in the action removed; see note to *Jones* v. *Hey*, 17 W. R. 996; for form of memorandum of appearance, see *ante* No. 294; and the action then proceeds according to the practice of the High Court; see Dan. Pr. 1433; Chitty's Arch. 1327, 1328.

(*w*) If, during the progress in a County Court of any suit or matter, it appears that the subject-matter thereof exceeds the limit in point of amount to which the jurisdiction of County Courts is limited by the 28 & 29 Vict. c. 99, any party thereto may apply, at Chambers, to such Vice-Chancellor as the Lord-Chancellor may, by general order, direct, for an order authorising and directing the suit or matter to be carried on and prosecuted in the County Court, notwithstanding such excess; and the Vice-Chancellor, if he deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, has full power to make such order; 28 & 29 Vict. c. 99, s. 9. An application under this section must be made to the Vice-Chancellor Malins; Ord. of Court, 17 April, 1871 (Reg. Lib. B. 817). The application is by originating summons, for the practice as to which, see *ante* Nos. 865—880, and notes thereto. For order in like case, see *Tiffin* v. *Mains*, V.-C. M. at Chambers, 7 March, 1876, Reg. Lib. B. 566.

(2.) *From the Mayor's Court* (*x*).

(*x*) The old practice as to the removal of actions and suits pending in the Mayor's Court was as follows: the proceeding could only be removed by writ of *certiorari*, or by the order of a Judge of the superior Court; 20 & 21 Vict. c. clvii., s. 52; and the usual course was to remove it by *certiorari*. In the case of an action pending on the common law side of the Mayor's Court, wherein the debt or damages claimed did not exceed £50, the defendant was not entitled to remove by *certiorari*, unless he either gave security for payment of the debt or damages and costs to the satisfaction of the Mayor's Court, or obtained leave from a Judge of a superior Court to issue the writ; 20 & 21 Vict. c. clvii., s. 16; in other cases the defendant was entitled, before plea pleaded in the Mayor's Court, to sue out the writ as of right, and without any leave; 20 & 21 Vict. c. clvii., s. 19; Chitty's Arch. 1321, 1323; but the defendant was obliged to lodge the writ with the proper officer of the Mayor's Court within a certain time; see 20 & 21 Vict. c. clvii., ss. 17, 18. Where an application to the superior Court, or Judge thereof, for leave to issue the writ was necessary, no action was commenced therein, and the application and affidavit in support (if any) were entitled in the Court only, and not in any cause; Chitty's Arch. 1323, 1324. A suit depending on the equity side of the Mayor's Court was not removable out of that Court into the Court of Chancery without the order of a Judge of the latter Court, made upon application for that purpose; 20 & 21 Vict. c. clvii., s. 20; and it was further provided that no cause should be so removed out of the equity side of the Mayor's Court, if the Judge to whom the application is made shall consider that the matter in question in the suit is fit to be tried in the Mayor's Court; *Ibid.* The practice to obtain a removal of a cause under this section, was for the party applying to file a bill, called a *certiorari* bill, stating the proceedings in the Mayor's Court, and alleging some ground for removing the proceedings into the Court of Chancery, as a want of jurisdiction in the Mayor's Court, and praying a writ of *certiorari* to remove the cause into Chancery; Dan. Pr. 1430; for instances of such bills, see *Davies* v. *McHenry*, 1867, D. No. 138; L. R. 3 Ch. 200; *Jones* v. *Hey*, 1869, J. No. 82; 17 W. R. 996; *Tracy* v. *Open Stock Exchange Co.*, 1870, T. No. 157; L. R. 11 Eq. 556. In this *certiorari* suit all the proceedings (unless steps were taken to quash the writ) were *ex parte*; the bill was not served, nor was any appearance entered thereto; but the plaintiff moved *ex parte* on an affidavit verifying the statements in the bill for the writ of *certiorari*. The writ having been issued, served, and returned in the ordinary way, the plaintiff, if the incompetency of the inferior Court appeared upon the face of the proceedings, moved *ex parte* that the proceedings might be retained in the Court of Chancery; if the incompetency did not so appear, then the motion was for an inquiry whether the allegations in the bill were proved, and if the Chief Clerk certified in the affirmative, an order was made *ex parte* that the proceedings be retained. When an order had been made retaining the suit removed from the inferior Court, the defendant in that suit entered an appearance therein, and it then proceeded in the ordinary way; the *certiorari* suit being dropped altogether. As to the above proceedings, see Dan. Pr. 1430—1433; *Davies* v. *McHenry*, *ubi supra*; *Jones* v. *Hey*, *ubi supra*; *Tracy* v. *Open Stock Exchange Co.*, *ubi supra*. It is understood that no case of a writ of *certiorari* to an inferior Court out of the Chancery Division has occurred under the new practice; and it is suggested that it is not now necessary to commence an action previously to applying for such a

1879.

Motion paper, notice of motion, or summons to remove action or suit in Mayor's Court (*y*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of a certain action [*Or*, suit] now depending on the common law [*Or*, equity] side of the Mayor's Court, London, wherein A. B. is plaintiff, and C. D. is defendant (*z*).

writ. This view has already been put forward in Seton (ed. 4, p. 329), and is supported by the course pursued in *Nothard* v. *Proctor* and *Blewitt* v. *Proctor* (in the Mayor's Court), V.-C. B., 16 Nov. 1875, Reg. Lib. B. 2872; in *Nothard* v. *Proctor*, a bill was filed, before the 1st Nov. 1875, praying for a receiver and an administration decree, but not referring to any proceedings in the Mayor's Court, which in fact were not commenced until some days afterwards; see the statement in 1 Ch. D. 5. An order was made by the Vice-Chancellor, removing the proceedings in the Mayor's Court into the Chancery Division, and consolidating them with the cause of *Nothard* v. *Proctor*: this order was intituled in the cause of *Nothard* v. *Proctor*, "and in the matter of a certain suit now pending on the equity side of the Mayor's Court, London, wherein B. is plaintiff and P. is defendant." It will be observed that in this case there was no action or suit depending in the High Court analogous to the old *certiorari* suit in which the order for removal was made. As the Judge to whom the application is made must, before ordering the removal of the cause, be satisfied that the matter in question in the suit is not fit to be tried in the Mayor's Court (see 20 & 21 Vict. c. clvii., s. 20), it would seem to be proper, when applying for the order to remove, or for the *certiorari*, to apply at the same time, that the suit when removed may be retained and prosecuted in the High Court. This saves the expense of a subsequent application to retain the proceedings, and was the course pursued in *Blewitt* v. *Proctor*, *ubi supra*. Besides the cases in which a cause proceeding in the Mayor's Court might have been removed under the old practice, an application to remove such a cause may now be made under 36 & 37 Vict. c. 66, s. 90 (see note (*m*) to No. 1870 *ante*), where the defendant therein sets up a defence or counter-claim, involving matter beyond the jurisdiction of the Mayor's Court.

(*y*) See 20 & 21 Vict. c. clvii., ss. 20, 52; *supra*, note (*x*) at p. 1000; and 36 & 37 Vict. c. 66, s. 90; *supra*, note (*m*) to No. 1870. As to whether it is necessary to commence an action in the superior Court before making the application, see note (*r*) at p. 1000, *supra*. If the application is made at Chambers, it must, unless made in a proceeding already pending in the superior Court, be made by an originating summons, for the practice as to which, see *ante* Nos. 865—880, and notes thereto. The application should in any case be supported by an affidavit verifying the grounds on which the application is made. For order in like case, see *Nothard* v. *Proctor* and *Blewitt* v. *Proctor*, V.-C. B., 16 Nov. 1875, Reg. Lib. B. 2872. When an order for removal is made, it would seem that an appearance should be entered in the superior Court by the defendant; for form of memorandum of appearance, see *ante* No. 294. It may be observed that the practice of applying for an order to remove, seems to be more convenient and less expensive than that of applying for a *certiorari*.

(*z*) As to the title, see *Nothard* v. *Proctor* and *Blewitt* v. *Proctor*, V.-C. B., 16 Nov. 1875, Reg. Lib. B. 2872; and note (*x*) at p. 1000, *supra*.

[*If the application is made by motion, ex parte, say :*] To move on behalf of

[*If it is made by motion on notice, say :*] Take notice [*&c., proceed as in* No. 1571 *ante, to* counsel] on the part of

[*If it is made by summons, say :*] Let all parties [*&c., proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of

[*In any case proceed thus :*] the above-named C. D. [*or as may be*], of [*residence and addition*], that the above-mentioned action [*Or*, suit] of B. *v.* D. now depending on the common law [*Or*, equity] side of the Mayor's Court, London, and all proceedings had therein, may, pursuant to the provisions in that behalf of the Mayor's Court of London Procedure Act, 1857, be removed from out of the common law [*Or*, equity] side of the said Mayor's Court, into the Chancery Division of this honourable Court, and be assigned to the Master of the Rolls [*or as may be*]. And that the original proceedings filed in the said Mayor's Court, London, or office copies thereof, may be brought into and placed on record in this Court, and that the Clerks of Records and Writs may be ordered to receive and file the same. And that the said action [*Or*, suit], when removed, may be continued and prosecuted in this Court, in the same manner as if it had been originally commenced therein, and assigned to the said Judge.

1880.

Motion paper, notice of motion, or summons for writ of *certiorari* to remove action or suit out of the Mayor's Court (*z*).

[*Title and formal commencement, as in* No. 1879 *ante.*] that a writ of *certiorari* may be ordered to issue, directed to the Lord Mayor of the City of London, and his brethren the Aldermen thereof, to certify and remove the plaint in the above-mentioned action [*Or*, suit] of B. *v.* D. now depending on the common law [*Or*, equity] side of the Mayor's Court, London, with the process and all proceedings thereon, from out of the said Mayor's Court into the Chancery Division of this honourable Court. And that the Clerks of Records and Writs may be ordered to receive and file the

(*z*) This application is necessary in the cases mentioned in 20 & 21 Vict. c. clvii., ss. 16, 19, 20 ; note (*x*) at p. 1000, *supra ;* in other cases the writ might, under the old practice, and, it would seem, may now, issue as of right and without any leave obtained for the purpose ; see Chitty's Arch. 1323. As to whether it is necessary to commence an action in the superior Court before making the application, see note (*x*) at p. 1000, *supra*. If the application is made at Chambers, it must, unless made in some proceeding already pending in the superior Court, be made by originating summons, for the practice as to which, see *ante* Nos. 865—880, and notes thereto. The application must be supported by an affidavit verifying the grounds upon which the application is made. It seems a more convenient practice, instead of applying for a *certiorari*, to apply for an order removing the cause ; see *ante* No. 1879, and note (*y*) thereto.

same. And (*a*) that the said action [*Or*, suit], when removed, may be assigned to the Master of the Rolls [*or as may be*], and may be continued and prosecuted in this Court, in the same manner as if it had been originally commenced therein, and assigned to the said Judge.

1881.

Præcipe for the writ (*b*).

Title as in No. 1879 *ante.*

Seal a writ of *certiorari* directed to the Lord Mayor of the City of London, and his brethren the Aldermen of the same City, pursuant to order dated —— day of ——, 187—.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing the writ; see ante* No. 92.]

1882.

Writ of *certiorari* (*c*).

Victoria [*&c.: as in* No. 1414 *ante.*]

To the Lord Mayor of the City of London, and his brethren the Aldermen of the same City, greeting:

We, willing for certain causes to be certified of and upon a certain plaint before you against C. D., at the suit of A. B., lately exhibited and now depending, command you, that the plaint aforesaid, with all things touching the same, by whatsoever names the parties aforesaid, or any or either of them, are or is set down, before us in the Chancery Division of our High Court of Justice, truly, fully, and exactly as in your custody they now remain,

(*a*) As to combining with an application for a writ of *certiorari*, an application that the cause, when removed, may be prosecuted in the superior Court, see note (*x*) at p. 1000, *supra*. If the order be not made in this form, or if the writ of *certiorari* is issued without an order, it would seem, by analogy to the old practice, that a further order must be obtained, retaining the cause in the superior Court; see note (*x*) at p. 1000, *supra*. For form of application in such case, see *post* No. 1885.

(*b*) The *præcipe* must be impressed with a 5*s.* stamp, where the proceeding is on the lower scale, and with a 10*s.* stamp, where it is on the higher scale; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*c*) For a course of proceeding to remove a cause which seems to be preferable to that by *certiorari*, see *ante* No. 1879, and note (*y*) thereto. As to the cases in which it is necessary to obtain the leave of the Court or a Judge to issue the writ, see note (*z*) to No. 1880 *ante*. Where such leave is necessary, the order giving leave must be produced on issuing the writ. As to the stamp payable on issuing the writ, see note (*b*) to No. 1881 *ante*. The writ should be engrossed on parchment. It is served by being lodged with the Registrar of the Court. It must be so lodged within a month after service of the plaint, or before the action is entered for trial; 20 & 21 Vict. c. clvii., s. 17; and see

under your seals distinctly and openly ye send immediately (*cc*), and this writ: that further that we may cause to be done what of right ought to be done.

Witness [*&c.; conclude as in* No. 93 *ante.*]

1883.

Indorsement on the writ (*dd*).

[*Same as* No. 94 *or* No. 95 *ante.*]

1884.

Return to the writ (*d*).

(1.) [*To be endorsed on the writ.*] The execution of this writ appears in the schedule annexed.

The answer of X. Y., Lord Mayor, and the Aldermen of the City of London.

(2.) [*Schedule to be annexed to the writ.*]

London [to wit]: We, the Right Honourable X. Y., Lord Mayor, and the Aldermen of the City of London, to our Sovereign Lady the Queen in Her High Court of Justice do most humbly certify: that before the coming of this writ to us directed, and to this schedule annexed [to wit], on the —— day of ——, 187— [*date of filing plaint in the Mayor's Court*], A. B. in the said writ named, in his own proper person, came here into the Court of our said Lady the Queen, holden before the said Mayor and Aldermen in the chambers of the Guildhall in the said city, and then and there, according to the custom of the said city, exhibited a certain plaint against C. D. in the said writ also named; and which said plaint is hereunto annexed.

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s. 18. The service of the writ has the effect of suspending all proceedings in the Mayor's Court; Chitty's Arch. 1324.

(*cc*) Every writ of *certiorari* to the Mayor's Court must be made returnable immediately; 20 & 21 Vict. c. clvii., s. 52.

(*dd*) See Cons. Ord. III. 2, 5.

(*d*) As to the mode of compelling a return to the writ, see note (*f*) to No. 1416 *ante*. The return should state the main proceedings in the inferior Court down to the issuing of the writ, and the original record therein should be annexed to the return. If an order has been made that the cause be continued in the superior Court, the defendant in the cause should, when the return is filed, enter an appearance therein in the superior Court; see note (*x*) at p. 1000, *ante;* for forms of memorandum of appearance, see *ante* No. 294. If no such order has been made, an application should be made therefor; see *post* No. 1885. After such order and appearance, the cause proceeds according to the ordinary course of the High Court; see Dan. Pr. 1433; Chitty's Arch. 1327, 1328.

1885.

[*Title and formal commencement, as in* No. 1879 *ante.*]
on the part of the above named C. D. [*or as may be*], that the Clerks of Records and Writs may be ordered to receive and file the writ of *certiorari* issued in this matter, and the proceedings returned therewith from the Mayor's Court of the City of London in the above-mentioned action [*Or*, suit] of B. *v.* D. And that the said action [*Or*, suit] may be retained in this Court, and may be assigned to the Master of the Rolls [*or as may be*], and may be continued and prosecuted in this Court, in the same manner as if it had been originally commenced therein, and assigned to the said Judge.

Motion paper, notice of motion, or summons that cause may proceed in the Superior Court (*e*).

(3.) *From other inferior Courts* (*f*).

1886.

[*Same as* No. 1879 *ante; the proper style of the inferior Court being substituted for* the Mayor's Court, London, *and the reference to the Mayor's Court of London Procedure Act,* 1857, *being omitted.*]

Motion paper, notice of motion, or summons to remove cause (*g*).

(*e*) As to the necessity for this application, see note (*x*) at p. 1000, *ante*, and note (*a*) to No. 1880 *ante*. After the order is made, and the proceedings filed, the defendant should enter an appearance in the High Court; see note (*x*) at p. 1000 *ante;* for form of memorandum of appearance, see *ante* No. 294.

(*f*) Except in cases coming within the 36 & 37 Vict. c. 66, s. 90 (see it, *supra*, note (*m*) to No. 1870), the mode of removing proceedings from an inferior Court (other than a County Court, under 28 & 29 Vict. c. 99, s. 3; see note (*m*) to No. 1870 *ante:* or than the Mayor's Court, under 20 & 21 Vict. c. clvii., ss. 20, 52; see note (*x*) at p. 1000, *ante*) into the High Court is by writ of *certiorari;* but as to suits proceeding in the Court of Chancery of Lancaster, see 17 & 18 Vict. c. 82, s. 8. Under the old practice, a *certiorari* to remove proceedings from an inferior Court of common law jurisdiction into a superior Court of law, issued generally as a matter of right and without any leave of the Court or Judge; though to this there were exceptions, the principal of which were, where the writ was to issue to a County Court, to the Mayor's Court, or to the common law Courts of the counties palatine (the jurisdiction of which is now vested in the High Court; 36 & 37 Vict. c. 66, s. 16, sub-ss. 9, 10, and s. 22); see Chitty's Arch. 1323. But a *certiorari* to remove proceedings from an inferior Court of equitable jurisdiction into the Court of Chancery, seems never to have issued without the leave of the Court or a Judge, obtained upon bill filed; see Dan. Pr. 1430, and note (*x*) at p. 1000, *ante*. As to the present practice upon issuing a *certiorari* to remove a cause from an inferior Court into the Chancery Division of the High Court, see note (*x*) at p. 1000, *ante*.

(*g*) See 36 & 37 Vict. c. 66, s. 90; note (*m*) to No. 1870 *ante*. If the application is made at Chambers, it should be by originating summons, for the

1887.

Motion paper, notice of motion, or summons for writ of *certiorari* to remove cause (*h*).

[*Same as* No. 1871 *or* No. 1880 *ante, substituting the proper style of the inferior Court, and of the Judge thereof.*]

1888.

Præcipe for the writ (*j*).

[*Same as* No. 1413 *or* No. 1881 *ante, substituting the proper style of the Judge of the inferior Court.*]

1889.

Writ of *certiorari* (*k*).

[*Same as* No. 1414 *or* No. 1882 *ante, substituting the proper style of the inferior Court and of the Judge thereof.*]

1890

Indorsement on writ (*kk*).

[*Same as* No. 94 *or* No. 95 *ante.*]

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practice as to which, see *ante* Nos. 865—880, and notes thereto. The application should be supported by an affidavit, stating the counter-claim, and showing that it involves matter beyond the jurisdiction of the inferior Court.

(*h*) As to when this application is necessary, see note (*f*) at p. 1005, *supra*. As to whether it is necessary to commence an action in the superior Court before making the application, see note (*x*) at p. 1000, *ante*. As to when the application should be by originating summons, see note (*z*) to No. 1880 *ante*. As to combining with the application, an application that the cause when removed may be prosecuted in the superior Court, see note (*x*) at p. 1000, *ante*, and note (*a*) to No. 1880 *ante*. The application should be supported by an affidavit verifying the ground upon which it is made.

(*j*) See note (*b*) to No. 1881 *ante*.

(*k*) As to when it is necessary to obtain leave to issue the writ, see note (*f*) at p. 1005, *supra*. Where leave is necessary, the order giving leave must be produced on issuing the writ. As to whether it is necessary to commence an action before issuing the writ, see note (*x*) at p. 1000, *ante*. As to the stamp payable on issuing the writ, see note (*b*) to No. 1881 *ante*. The writ should be engrossed on parchment and served on the Judge of the inferior Court. The service has the effect of suspending all proceedings in the inferior Court.

(*kk*) See Cons. Ord. III. 2, 5.

1891.

Return to the writ (*l*).

[*For the formal parts of the return, see ante* No. 1416 *or* No. 1884. *The body of the return should state the main proceedings in the inferior Court, down to the issuing of the writ; see ante* No. 1416 *or* No. 1884. *The original record in the Court below should be annexed.*]

1892.

Motion paper, notice of motion, or summons that cause may proceed in Superior Court (*m*).

[*Same as* No. 1885 *ante, substituting the proper style of the inferior Court.*]

(*l*) As to the mode of compelling a return, see note (*f*) to No. 1416 *ante*. As to entering an appearance in the High Court after the writ is returned, see note (*v*) to No. 1877 *ante*, and note (*d*) to No. 1884 *ante*.

(*m*) See note (*e*) to No. 1885 *ante*.

CHAPTER XXXII.

PROHIBITION (*a*).

1893.
Præcipe for writ (*b*).

In the matter of a certain plaint, now depending in the Court of —— [*Insert style of inferior Court*], between A. B., plaintiff, and C. D., defendant.

Seal a writ of prohibition, directed to the Judge of the Court of —— [*Style of inferior Court*], and to the above-named A. B., to prohibit them from further proceeding in the said plaint.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party issuing writ; see ante* No. 92.]

1894.
Writ of prohibition (*c*).

Victoria [*&c.: see ante* No. 93.]

To the Judge of the Court of —— [*Insert style of inferior Court*], and to A. B., of [*address and description*], greeting:

Whereas, we hear and have been informed and given to understand that you, the said A. B., have entered a plaint against and impleaded C. D. in the said Court, and that the said Court has no

(*a*) A writ of prohibition is a writ issued out of the High Court of Justice to restrain inferior Courts from exceeding their jurisdiction. As to the writ of prohibition, see Com. Dig. Prohibition; Stephen's Commentaries, ed. 7, vol. iii., p. 635; Seton, ed. 4, 333—337; as to a writ of prohibition to a County Court, see Chitty's Arch. 1735.

(*b*) The *præcipe* must bear a 5*s.* stamp impressed thereon; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*c*) The writ issues as of course out of the Petty Bag Office, without any order, upon production of an affidavit, stating the proceedings in the inferior Court, and showing clearly and distinctly that the inferior Court has no jurisdiction in respect of such proceedings, or is exceeding its jurisdiction; see *Jacobs* v. *Brett*, L. R. 20 Eq. 1, at p. 5; *Chambers* v. *Green*, L. R. 20 Eq. 552. It may issue on the application of any person, either a party to the proceeding in the inferior Court, or a stranger; *Jacobs* v. *Brett*, *ubi supra*, at pp. 5, 6; but as to setting aside the writ where it is issued at the instance of a stranger, see *Chambers* v. *Green*, L. R. 20 Eq. 552; *Ellis* v. *Fleming*, 1 C. P. D. 237. Where there is an absence of jurisdiction altogether in the inferior Court, the writ may be issued at once; but where the inferior Court has a general jurisdiction in respect of the subject-matter, the writ cannot

jurisdiction in the said cause, or to hear and determine the said plaint by reason [*Here state the facts as to the want of jurisdiction, as thus :*] that the debt or demand, for the recovery whereof the said action is brought, exceeds the sum of £50.

We do therefore hereby prohibit you, and every of you, from further proceeding in the said plaint or action in the said Court

[*If judgment has been obtained in the inferior Court, add :*] or on the judgment obtained therein.

Herein fail not at your peril.

Witness [*&c. : Conclude as in* No. 93 *ante*].

1895.

[*Same as* No. 94 *or* No. 95 *ante.*]

Indorsement thereon (*d*).

be issued until the pleadings raise some issue which the inferior Court is incompetent to try; *Mayor, &c., of London* v. *Cox*, L. R. 2 H. L. (Eng. and Ir. App. Ca.), 239; and the writ may be issued after judgment, or even after execution; Com. Dig. Prohibition (D). The affidavit upon which the writ issues may be entitled in the matter of the proceeding in the inferior Court; see title of form No. 1893 *ante*. The writ should be engrossed on parchment, and should be directed to the Judge of the inferior Court, and to the plaintiff proceeding therein. As to the stamp payable on issuing the writ, see note (*b*) to No. 1893 *ante*. The writ should be served upon the Judge of the inferior Court, and also upon the parties to the proceeding there; and if the Judge or any party proceeds after the prohibition, it is a contempt of Court; Com. Dig. Prohibition (C). Where the writ is issued to a County Court, it must be lodged with the Registrar, and notice given to the opposite party two clear days before the day fixed for hearing the cause, otherwise the party obtaining the writ may be ordered to pay the costs of the day; 19 & 20 Vict. c. 108, s. 41.

(*d*) See Cons. Ord. III. 2, 5.

CHAPTER XXXIII.

ASCERTAINMENT OF FOREIGN LAW (*a*).

1896. Notice of motion for a case to be settled in chambers (*b*).

Formal parts : see ante No. 1571.

on the part of the plaintiff [*or as may be*], that a case may be prepared setting forth the facts, and that such case, and the questions of Scotch law arising out of the same, may be settled by the Judge, for the purpose of ascertaining whether [*State the question*]. And that such case and questions, when so approved and settled, may be remitted to the Court of Session in Scotland, and that the said Court may be desired to pronounce its opinion on such questions, upon the law administered by the said Court as applicable to the facts to be set forth in such case.

1897. Summons to proceed under order (*c*).

Formal parts : see ante No. 881.

on the part of the plaintiff [*or as may be*], to settle the draft of the case directed by the order dated the —— day of ——, 187—.

1898. Case for the opinion of a British Court abroad, under 22 & 23 Vict. c. 63 (*d*).

In the High Court of Justice,

Chancery Division.

[*Title of the cause or matter, and reference to the record.*]

Case under the statute 22nd & 23rd Victoria, chapter 63, for the opinion of Her Majesty's High Court of Judicature at Fort William, in Bengal, in the East Indies [*or as may be*].

1.
2.
3. } [*Set forth the facts, in numbered paragraphs.*]

The opinion of Her Majesty's High Court of Judicature at

(*a*) See Dan. Pr. 1011—1015 ; and see *Ibid.*, 1011, and 22 & 23 Vict. c. 63, as to British Courts ; and *Ibid.*, 1013, and 24 & 25 Vict. c. 11, as to foreign Courts. For forms of orders remitting a case to a British Court, see Seton, ed. 4, p. 391 ; and for the practice as to settling and remitting a case, and dealing with the opinion, see Dan. Pr. 1012, 1013.

(*b*) For form of order, see Seton, ed. 4, 391, No. 1.

(*c*) See No. 968 *ante*.

(*d*) See *Login* v. *Princess of Coorg*, M. R. at Chambers, 15 Feb. 1862, Reg. Lib. B. 362 ; 30 Beav. 632.

Fort William, in Bengal [*or as may be*], is requested, with reference to the Hindoo Law [*or as may be*], as administered by that Court, and so far as the same is applicable to the facts set forth in the above case, in terms of the statute 22nd & 23rd Victoria, chapter 63, upon the following

Questions.

1. What, *&c.* } [*State the questions of law on which the*
2. On whom, *&c.* } *opinion of the Court is desired.*]

1899. Memorandum identifying case (*e*).

In the High Court of Justice,
Chancery Division.
[*Short title of cause or matter, and reference to the record.*]

This case, and the questions of law arising out of the same, above stated, have been settled and approved by the Master of the Rolls [*Or*, Vice-Chancellor ——], as the case and questions to be remitted for the opinion of the High Court of Judicature at Fort William, in Bengal [*or as may be*], pursuant to the order in this cause [*Or*, matter], dated the —— day of ——, 187—.

Dated this —— day of ——, 187—.

R. M., Chief Clerk.

1900. Formal parts of an opinion (*f*).

In the High Court of Judicature at Fort William, in Bengal.
[*Title of the cause, as in the case remitted.*]

This cause coming on this —— day of ——, 187—, for the opinion of the Court on the questions contained in the case stated pursuant to the order of Her Majesty's High Court of Justice in England, dated the —— day of ——, 187—, upon the Hindoo law administered in this Court, as applicable to the facts set forth in the said schedule: upon hearing counsel learned on both sides, the Court pronounced the opinion set forth in the schedule hereunto annexed, and marked with the letter A. Dated, *&c.*

J. G., Registrar.

A. The schedule above referred to.
[*Title of cause.*]

The opinion of Her Majesty's High Court of Judicature at Fort William, in Bengal, with reference to the Hindoo law as administered by that Court, and so far as the same is applicable to the facts set forth in the above case, in terms of the statute 22nd & 23rd Victoria, chapter 63.

Answer to the 1st Question:

We are of opinion, *&c.*

Answer to the 2nd Question, *&c.*, *&c.*

[*Date and signatures of the Judges.*]

(*e*) See Dan. Pr. 1013. The memorandum should be written either at the foot of the case, or in the margin of the first page of it.

(*f*) See *Login* v. *Princess of Coorg*, *ante* No. 1898 note (*d*).

1901. Notice of motion or summons to apply opinion (*g*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that the opinion of Her Majesty's Court of [*Describe it*], upon the case and questions remitted to that Court pursuant to the order in this cause [*Or*, matter] dated the —— day of ——, 187—, and which opinion has been filed in the Report Office of this Court, may be applied to the facts set forth in such case.

(*g*) See Dan. Pr. 1013; 22 & 23 Vict. c. 63, s. 3. For order on hearing on further consideration, applying opinion of Court abroad on the case submitted, see *Login* v. *Princess of Coorg*, M. R., 10 July, 1865, Reg. Lib. B. 2401.

CHAPTER XXXIV.

CONTEMPTS (*a*).

1902. Motion paper for an order *nisi*, for committal for a contempt of Court (*b*).

Formal parts : see ante No. 1570.

To move on behalf of the plaintiff [*or as may be*], for an order *nisi* that the defendant C. D. [*or as may be*] may be committed to prison, for a contempt of this Court in [*State nature of contempt*].

1903. Order *nisi* for committal for an alleged contempt taken notice of by the Court itself (*c*).

Formal parts.

Upon reading an affidavit of A. B., of, *&c.*, filed in this matter on, *&c.*, and the exhibits marked A. and B. therein referred to : the said exhibit A. being, *&c.*, and the said exhibit B. being, *&c.* : And it appearing from the said affidavit that, *&c.* : and the [*Judge*] taking notice of the circumstances stated in the said affidavit, and being of opinion that, in case such circumstances are proved, the said C. D. has been guilty of misbehaviour and of a contempt of this Court, doth order, that the said C. D., having personal notice hereof, do attend his lordship at the sitting of this Court, at the hour of ten in the morning, on the —— of ——, and do then show cause to this Court why he should not stand committed to [the Holloway Prison].

1904. Notice of motion for committal, for a contempt of Court (*d*).

Formal parts : see ante No. 1571.

on the part of the plaintiff [*or as may be*], that the defendant A. B. [*Or*, A. B., of [*residence and addition*]], may be committed

(*a*) As to contempts in not obeying a judgment or order of the Court, see *ante* Nos. 1375, 1393, 1396. As to special contempts, see Dan. Pr. 936—938.

(*b*) As to when an *ex parte* motion for an order *nisi* for committal should be made in the first instance, see Dan. Pr. 937.

(*c*) *Re Constantinople and Alexandra Hotel Cos., Limited*, M. R., 21 July, 1870, Reg. Lib. A. 1867. As to the service of the order *nisi*, see Dan. Pr. 937, 938. For form of application for order for substituted service of the order *nisi*, see *ante* No. 1264. For form of application for order to make absolute the order *nisi*, see *ante* No. 1608. As to the form of the order absolute for committal, see Dan. Pr. 938.

(*d*) As to when notice of motion should be given, see Dan. Pr. 938. As to the service of the notice of motion, see *Ibid.*, 937, 938. For form of application for order for substituted service of the notice, see *ante* No. 1264. For order for committal made upon motion on notice, see *Price* v. *Hutchison*, V.-C. M., 16 Dec. 1869, Reg. Lib. B. 2992; L. R. 9 Eq. 534. As to the form of such order, see Dan. Pr. 938. For form of notice of motion to commit, for contempt in marrying a ward of Court, see *ante* No. 1215.

to prison for a contempt of this honourable Court, in [*State what; as thus:*] writing and procuring to be published, in a newspaper called "The Times," of the —— day of ——, instant, a certain letter signed X. Y.

1905.

Notice of motion for discharge from a special contempt of Court (*e*).

Formal parts: see ante No. 1571.

on the part of (the defendant) A. B., now a prisoner in the Holloway Prison, by virtue of an order dated, *&c.*, for the contempt therein mentioned of this honourable Court, that, upon payment or tender by him of the costs of his said contempt, he may be discharged from the custody of the keeper of the said prison, touching his said contempt.

(*e*) See Dan. Pr. 938. For order in like case upon payment of a sum of money towards discharge of costs to be taxed, and upon an undertaking to pay the balance, if any, of the taxed costs, see *Price* v. *Hutchison*, V.-C. M., 12 Jan. 1870, Reg. Lib. B. 7; L. R. 9 Eq. 537.

CHAPTER XXXV.

REFERENCES TO REFEREES AND ARBITRATORS (*a*).

SECTION I.—REFERENCES FOR REPORT (*b*).

(*a*) The powers of reference given by the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66, ss. 56, 57), are not by way of repeal of, nor in substitution for, but in addition to the powers of reference formerly existing. Under the Supreme Court of Judicature Act, 1873, and the previous practice, there are now two different kinds of reference: (1.) A reference of a question or questions in a cause or matter for report under the Supreme Court of Judicature Act, 1873, ss. 56, 57; in this case the report of the referee is not a final decision of the question or questions referred, but may be reviewed by the Court, and can be enforced only if, and so far as, adopted by the Court; (2.) A reference under the previously existing practice of the cause or matter for decision; in such a case the decision of the arbitrator is final unless a defect appears upon the face of the award. See *Cruikshanks* v. *Floating Baths Co.*, 1 C. P. D. 260; and *Longman* v. *East*, 3 C. P. D. 142, *per* Brett, L. J., at pp. 152, 153.

(*b*) By the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 56, it is provided that subject to any Rules of Court, and to the right of a party to have particular cases submitted to the verdict of a jury (see *Sugg* v. *Silber*, 1 Q. B. D. 362), any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice, or before the Court of Appeal, may be referred by the Court, or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee. By the 57th section of the same Act, it is provided that in any cause or matter (other than a criminal proceeding by the Crown) before the High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a Judge may, at any time, on such terms as may be thought proper, order any question or issue of fact, or any question of account, arising therein to be tried either before an official referee, or before a special referee to be agreed on between the parties. Under these sections, there is no power to refer the whole action to a referee, so as to enable him to act as Judge, and to decide all questions arising therein, or to enter judgment for either party. Under s. 56, a question or questions arising in an action may be referred for inquiry and report. Under s. 57, questions or issues of fact, or a question of account, may be ordered to be tried before a referee; by consent, all the questions or issues of fact arising in an action may be ordered to be tried before a referee; but where the reference is compulsory, only questions involving a prolonged investiga

tion of documents or accounts, or a scientific or local investigation, which cannot be conveniently made before a jury, or through the other ordinary officers of the Court, can be ordered to be tried before a referee ; *Longman* v. *East* (C. A.), 3 C. P. D. 142 ; 26 W. R. 183 ; *Pontifex* v. *Severn*, *Ibid.* ; *Mellin* v. *Monico*, *Ibid.* The expression, "question of account" in s. 57, will receive a large construction ; *Rowcliffe* v. *Leigh*, *Brook's claim*, 3 Ch. D. 292 ; and a claim in an administration suit, consisting of twenty-four items, was referred to an official referee ; *Ibid.* ; but the Court will not direct a reference unless that be a better mode of disposing of the question than any other ; *Ibid.* In an action to set aside the sale of 130 pictures for fraud, it was held that there was no jurisdiction to refer under s. 57 ; and that, even if there had been, a question of fraud affecting the character of the defendant ought not, against his will, to be tried otherwise than in open Court ; *Leigh* v. *Brooks*, 5 Ch. D. 592. By the same Act, it is provided that in all cases of reference to, or trial by, referees under the Act, the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such Rules) by the Court or Judge ordering such reference or trial ; s. 58 ; and that trials before referees shall be conducted in such manner as may be prescribed by Rules of Court, and, subject thereto, in such manner as the Court or Judge ordering the same shall direct ; s. 57 ; and a special referee agreed on between the parties has the same powers and duties, and should proceed in the same manner, as an official referee ; s. 57. A referee has, subject to any order to be made by the Court or Judge ordering the reference, the same authority in the conduct of any reference or trial as a Judge of the High Court, when presiding at any trial before him ; R. S. C. Ord. XXXVI. 32 ; but he has no power to commit any person to prison, or to enforce any order by attachment or otherwise ; *Ibid.*, rule 33 ; or to direct judgment to be entered for either party ; *Pontifex* v. *Severn*, 26 W. R. 80 ; affirmed on appeal, 3 C. P. D. 142. It would seem, that interlocutory orders made in the cause or matter pending the reference, *ex. gr.* orders for the production of documents, should be made by the Court, notwithstanding the reference ; *Rowcliffe* v. *Leigh*, 4 Ch. D. 661. Subject to any order to be made by the Court or Judge ordering the reference, evidence is to be taken at a trial before a referee, and the attendance of witnesses may be enforced by *subpœna*, and every such trial is to be conducted, in the same manner, as nearly as circumstances will admit, as trials before a Judge of the High Court, but not so as to make the tribunal of the referee a public Court of Justice ; R. S. C. Ord. XXXVI. 31. As to evidence on a trial, enforcing the attendance of witnesses, &c., see *ante* Chap. XI., p. 322. Subject to any order of the Court or Judge, the referee may hold the trial at, or adjourn it to, any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him ; R. S. C. Ord. XXXVI. 30. The referee must, unless otherwise directed by the Court or Judge, proceed with the trial *de die in diem* in a similar manner as in actions tried by a jury ; *Ibid.*, rule 30 ; this rule is directory only, and, though neglect to comply with it is misconduct on the part of the referee, a party who has at the time acquiesced in such non-compliance, cannot afterwards move to set aside the award on that ground merely ; *Robinson* v. *Robinson*, 24 W. R. 675. A referee, to whom a question is referred under s. 56, or before whom a question or issue is directed to be tried under s. 57, of the Act of 1873, has no power to direct any judgment to be entered in the

1906.

Notice of motion or summons for reference to referee, under sec. 56 (c).

Formal parts : see ante No. 1571 *or* No. 881.
on the part of the plaintiff [*or as may be*], that pursuant to the Supreme Court of Judicature Act, 1873, s. 56 (*cc*), the following

action ; when the reference is under s. 56, the duty of the referee is to report to the Court, and this report the Court may adopt wholly or partially, or the Court may differ from the referees' finding on the facts reported ; 36 & 37 Vict. c. 66, s. 56 ; *Longman* v. *East, Pontifex* v. *Severn, Mellin* v. *Monico*, 3 C. P. D. 142 ; 26 W. R. 183 (C. A.). When the reference is under s. 57, the duty of the referee is to report to the Court, and in this case the report of the referee is equivalent to the verdict of a jury, and the Court must accept it, unless it can set it aside, dealing with it as the verdict of a jury ; it may be set aside therefore if wrong evidence has been accepted ; or if the referee has considered the facts in a wrong way, so that if he had had to direct a jury there would have been misdirection ; or if it is against the weight of evidence ; 36 & 37 Vict. c. 66, s. 58 ; *Longman* v. *East, Pontifex* v. *Severn, Mellin* v. *Monico*, 3 C. P. D. 142 ; 26 W. R. 183 (C. A.). The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement is to be entered as the Court may direct ; and the Court has power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee ; R. S. C. Ord. XXXVI. 34. With respect to all proceedings before referees and their reports, the Court or Judge has, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction has been transferred to the High Court of Justice, with respect to references to arbitration, and proceedings before arbitrators, and their awards respectively, by the C. L. P. Act, 1854 (17 & 18 Vict. c. 125); Sup. Cot. Jud. Act, 1873, s. 59. The chief power thus conferred upon the Court seems to be that contained in the C. L. P. Act, 1854, s. 8, which provides that, where a reference is made to arbitration, the Court or a Judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the arbitrator, upon such terms as to costs and otherwise as to the said Court or Judge may seem proper. The power given by R. S. C. Ord. XXXVI. 34 (*supra*), to remit the cause to the referee, seems to be confined to the case where the referee has submitted a question or stated facts for the decision of the Court under that rule.

(*c*) The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner ; R. S. C. Ord. XXXIII. As to ordering inquiries to be made before an official or special referee, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 56 ; *supra*, note (*b*), at p. 1015. For order in like case, see Seton, ed. 4, p. 393, No. 1.

(*cc*) An order of reference under the Sup. Cot. Jud. Act, 1873, ought to state whether it is for report under s. 56, or to try issues under s. 57 ; and

question arising in this cause [*Or*, matter] may be referred to the Official Referee in rotation (*d*) [*Or*, to J. A., esquire, one of the Official Referees of the Supreme Court of Judicature (*d*); *Or*, to Mr. X. Y., of, *&c.*, as Special Referee (*e*)], to inquire and report, that is to say, whether [*Here state the question*]. And that the costs of this application may be costs in the cause [*Or*, matter].

1907.

Another form (*f*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that pursuant to the Supreme Court of Judicature Act, 1873, s. 56 (*ff*), it may be referred to Mr. A., of, *&c.*, as Special Referee, to survey and inspect the premises of the plaintiff and of the defendant respectively, and the premises adjoining thereto respectively, and to report whether or not the plaintiff's premises are affected by noise, arising or coming from the defendant's stables as ordinarily used by the defendant, and if so, then in what manner, and to what extent, and how the same is caused or arises. And also to report whether or not the plaintiff's premises are, or are likely to be, affected by the drainage coming from the defendant's stables as at present used, and if so, to what extent, in what manner, and how the same is caused or arises.

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an order under s. 57 should state whether all the questions in the cause are to be tried (as where it is by consent), or certain questions only, and, if so, what questions; *Longman* v. *East*, *Mellin* v. *Monico*, *Pontifex* v. *Severn*, 26 W. R. 183 (C. A.); 3 C. P. D. 163, note (1).

(*d*) The Court or Judge may direct a reference to any one in particular of the official referees, where it appears to the Court or Judge to be expedient to do so; R. S. C. Ord. XXXVI. 29*c* (R. S. C. June, 1876, rule 16); otherwise the business referred to the official referees is distributed among them in rotation by the Clerks to the Registrars of the Chancery Division; R. S. C. Ord. XXXVI. 29*a*, 29*b* (R. S. C. June, 1876, rules 14, 15); note (*o*) to No. 1910 *post*.

(*e*) As to the appointment of a special referee and his powers, duties and proceedings, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 56, 57; *supra*, note (*b*), at p. 1015.

(*f*) See Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 56; *supra*, note (*b*), at p. 1015; R. S. C. Ord. XXXIII.; note (*c*) to No. 1906 *ante*. For order in like case, see *Broder* v. *Saillard*, 2 Ch. D. 692, at p. 694.

(*ff*) See note (*c c*) to No. 1906 *ante*.

1908.

Notice of motion or summons for trial of question before a referee, under sec. 57 (*g*).

Formal parts : see ante No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that pursuant to the Supreme Court of Judicature Act, 1873, s. 57 (*gg*), the following question of fact [*Or*, issue of fact ; *Or*, question of account] arising in this cause [*Or*, matter] may be tried before the Official Referee in rotation (*h*) [*Or*, before I. A., esquire, one of the Official Referees of the Supreme Court of Judicature (*h*) ; *Or*, before Mr. X. Y., of, *&c.*, as Special Referee (*j*)]

[*If so, add :*] with Mr. G. H., of, *&c.*, and Mr. I. K., of, *&c.*, as assessors (*k*),

that is to say, whether [*Here state the question*].

[*If it is desired that the trial may be on any particular terms, or may be conducted in any particular manner* (*l*), *add :*] And that such trial may be on the following terms [*Or*, may be conducted in the following manner], that is to say : [*State what*].

1909.

Notice of motion or summons to have accounts taken before referee, under sec. 57 (*m*).

Formal parts : see ante No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that pursuant to the Supreme Court of Judicature Act, 1873, s. 57 (*mm*), it may be referred to the Official Referee in rotation [*or as may be ; see ante* No. 1906 (*n*)], to take the following accounts, namely :

1. An account of, *&c.*
2. An account of, *&c.*

And that in taking the said accounts no settled accounts may be disturbed. And that what, upon taking the said accounts, may be reported to be due from either of the said parties to the other of them may be ordered to be paid by the party from whom to the party to whom the same shall be reported to be due, within one calendar month after the date of the report of such referee.

(*g*) See Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57 ; *supra*, note (*b*), at p. 1015 ; R. S. C. Ord. XXXIII. ; note (*c*), to No. 1906 *ante*. For order in like case, see Seton, ed. 4, p. 393, No. 2.

(*gg*) See note (*cc*) to No. 1906 *ante*.

(*h*) See note (*d*) to No. 1906 *ante*.

(*j*) See note (*e*) to No. 1906 *ante*.

(*k*) See R. S. C. Ord. XXXVI. 28 ; note (*m*) to No. 744 *ante*.

(*l*) The reference will be on such terms as may be thought proper ; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57. As to the power of the Court or Judge to give directions as to the mode of conducting the reference, see 36 & 37 Vict. c. 66, ss. 57, 58 ; R. S. C. Ord. XXXVI. 30, 31, 32 ; *supra*, note (*b*) at p. 1016.

(*m*) See Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57 ; *supra*, note (*b*), at p. 1015 ; R. S. C. Ord. XXXIII. ; note (*c*) to No. 1906 *ante*. For order in like case, see *Ormond* v. *Townsend*, M. R. 16 Dec. 1875, Reg. Lib. B. 2099.

(*mm*) See note (*cc*) to No. 1906 *ante*.

(*n*) See notes (*d*) and (*e*) to No. 1906 *ante*.

1910.

Note of name of official referee in rotation (*o*).

Mr. A. is the Official Referee in rotation.
Dated —— day of ——, 187—.
X. Y. [*Signature of Registrar's Clerk*].

1911.

Summons to proceed with reference before official referee (*p*).

187—. B. No.

In the Supreme Court of Judicature,
Official Referee's Court.
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Let all parties concerned attend me at [*State where; as thus:*] my Court Room, situate at 3, Rolls Yard, Chancery Lane, in the county of Middlesex, on the —— day of ——, 187—, at —— of the clock in the ——noon, to proceed with the inquiry [*Or*, the trial; *Or*, the accounts] directed by the order of reference bearing date the —— day of ——, 187—.

Dated —— day of ——, 187—.

C. M. R.,
Official Referee.

(*o*) The business referred to the official referees is distributed amongst them in rotation by the clerks to the registrars of the Chancery Division, in like manner as the business referred to conveyancing counsel appointed under 15 & 16 Vict. c. 80, s. 1, is directed to be distributed by Cons. Ord. II. 1, 2; R. S. C. Ord. XXXVI. 29*a* (R. S. C. June, 1876, rule 14). When an order has been made referring any business to the official referee in rotation, the order, or a duplicate, must be produced to the registrars' clerk, whose duty it is to make the distribution (viz., the first clerk, or, in his absence, the second clerk to the Chancery registrars, or, in the absence of both such clerks, then such clerk as the senior Chancery registrar shall nominate; Cons. Ord. II. 1); and such clerk must indorse thereon a note specifying the name of the official referee in rotation to whom the business is referred; and the order so indorsed will be a sufficient authority to the official referee to proceed with the business; R. S. C. Ord. XXXVI. 29*b* (R. S. C. June, 1876, rule 15). Where a reference has been made to one in particular of the official referees, the reference must be recorded by the registrars' clerk in the manner mentioned in Cons. Ord. II. 2, and a note to that effect indorsed on the order of reference, and the clerk must have regard to such reference in distributing the business according to rotation; R. S. C. Ord. XXXVI. 29*c* (R. S. C. June, 1876, rule 16).

(*p*) This summons must be obtained by the party having the conduct of the reference, and must be served upon the other parties thereto; for form of affidavit of service, see *ante* No. 885. As to the mode of conducting the reference, see Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 57, 58;

1912.

The like, before a special referee (*q*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

I appoint ——day, the —— day of ——, 187—, at —— of the clock in the ——noon, at [*State where; as thus:*] my Chambers, situate at No. ——, Old Square, Lincoln's Inn, in the county of Middlesex, to proceed with the inquiry [*Or*, the trial; *Or*, the accounts] directed by the order of reference, dated the —— day of ——, 187—. And I direct that all parties concerned do attend me accordingly.

Dated —— day of ——, 187—.

X. Y.,
Special Referee.

R. S. C. Ord. XXXVI. rules 30 to 33; and see note (*b*) at pp. 1016, 1017, *supra*. As to the place at which the trial is to be held, see R. S. C. Ord. XXXVI. 30; note (*b*) at p. 1016, *supra*; as to having an inspection or view, see *Ibid.* As to evidence on the trial, see R. S. C. Ord. XXXVI. 31; and *ante* Chap. XI., p. 322. Upon every reference to an official referee, a fee is payable of £5 for the entire reference irrespective of the time occupied; Ord. 24th April, 1877; Wilson, 533. This fee must be paid before the reference is proceeded with, and is paid by means of a stamp or stamps affixed to the summons; *Ibid.* When the sittings are to be held out of London, a convenient place in which the sittings may be held must be provided to the satisfaction of the Official Referee, by and at the expense of the party proceeding with the reference, and in such case there must be paid (in addition to the fee of £5) a sum of £1 11*s.* 6*d.* for every night the Official Referee, and 15*s.* for every night the Official Referee's clerk, is absent from London on the business of the reference, together with the reasonable expenses of their travelling from London and back; Ord. 24 April, 1877; Wilson, 533. An account of such expenses or deposit may be required before proceeding with the reference, or at any time during the course thereof; and a memorandum of the amount deposited will be delivered to the party making the deposit; *Ibid.* The fee, expenses, and deposit, in respect of any reference are payable in the first instance by the party proceeding with the reference; *Ibid.*

(*q*) This appointment should be obtained by the party having the conduct of the reference, and should be served upon the other parties thereto; for form of affidavit of service, see *ante* No. 885. A special referee has the same powers and duties, and should proceed in the same manner as an official referee; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 57. As to the mode of conducting the reference, &c., see note (*p*) to No. 1911 *ante*, and note (*b*) at pp. 1016, 1017, *supra*. The remuneration to be paid to the special referee must be determined by the Court; 36 & 37 Vict. c. 66, s. 56; in *Wallis* v. *Lichfield*, W. N. (1876) 130, and in *Re Perrin, Court* v. *Perrin*, M. R. 31 Jan. 1876, Reg. Lib. B. 127, where the referees were Queen's Counsel, the remuneration was fixed at five guineas a sitting.

1913.
Report of referee (*r*).

In the High Court of Justice,
Chancery Division.

[*Title of cause or matter, and reference to record.*]

As Official Referee in rotation [*Or*, As Official Referee; *Or*, As Special Referee] to whom, by order made in this cause [*Or*, matter], and dated the —— day of ——, 187—, it was referred to try the following question or issue of fact, namely [*State what*] I report as follows, namely: That [*State the finding of the referee*].

Dated —— day of ——, 187—.

1914.
The like (*s*).

187—. B. No.

In the High Court of Justice,
Chancery Division.

[*Title of cause or matter, and reference to record.*]

As Official Referee [*&c.: as in* No. 1913 *ante*], to whom, by order [*&c.: as in* No. 1913 *ante*], the following inquiry was referred, that is to say: An inquiry what damages [*&c.: setting out the inquiry*], I report as follows, namely: That damages have been sustained by the defendant, *&c.*, and that the same amount to, *&c.*

Dated —— day of ——, 187—.

(*r*) The referee has no power to direct judgment to be entered in the action, but must report the result of the reference to the Court, by whom it may be either set aside or adopted, and if adopted may be enforced as a judgment; 36 & 37 Vict. c. 66, ss. 56, 58; *Pontifex* v. *Severn*, 26 W. R. 80; affirmed on appeal, 3 C. P. D. 142; see note (*b*), *supra*, at pp. 1016, 1017. For form of application to adopt and enforce the report, see *post* No. 1916; for form of application to set it aside, see *post* No. 1917. As to the power of the Court to remit the cause or matter for the reconsideration of the referee, see 17 & 18 Vict. c. 125, s. 8; 36 & 37 Vict. c. 66, s. 59; *supra*, note (*b*) at p. 1017; for form of application to remit the cause or matter to the referee, see *post* No. 1917. As to the power of the referee to submit any question for the decision of the Court, and to state facts specially for the opinion of the Court, see R. S. C. Ord. XXXVI. 34; and *supra*, note (*b*) at p. 1017; for form of application to set down special case for argument, see *post* No. 1918. The report, when signed by the referee, should be filed in the Report Office; Seton, ed. 4, p. 398. For the form of report in the text, see *Re Leigh, Rowcliffe* v. *Leigh, Brook's claim*, 1876, L. 100; report dated 9th June, 1877.

(*s*) See note (*r*) to No. 1913. For form of report in the text, see *Mayor, &c., of Birmingham* v. *Allen*, 1876, B. 77; report dated 14th June, 1877.

1915.
The like (*t*).

In the High Court of Justice,
Chancery Division.

[*Title of cause or matter, and reference to record.*]

As Official Referee [*&c.: as in* No. 1913 *ante*], to whom, by order [*&c.: as in* No. 1913 *ante*], it was referred to take the following accounts, namely: 1. An account of, *&c.*; 2. An account of, *&c.*; I report as follows, namely: That [*Here state result of taking each account, and the amount ultimately due from one party to the other*].

1916.
Notice of motion for adoption and enforcement of report (*u*).

Formal parts: see ante No. 1571.

on the part of the plaintiff [*or as may be*], that the report dated the —— day of ——, 187—, of X. Y., esquire, the Official [*Or*, Special] Referee in this cause [*Or*, matter] may be adopted

[*If it is desired that part only of the report may be adopted, state what part, as thus:*] so far as the same reports that the sum of £—— is due from the defendant to the plaintiff

And that [*Here state the relief claimed in accordance with the report; as thus:*] the above-named defendant C. D. may be ordered to pay to the plaintiff the sum of £——, mentioned in the said report, together with the plaintiff's costs of this action to be taxed.

(*t*) See note (*r*) to No. 1913 *ante*. For form of report in the text, see *Ormond* v. *Townsend*, 1875, O. 2*a*; report dated 4th July, 1877.

(*u*) As to the effect of a referee's report, see 36 & 37 Vict. c. 66, ss. 56 and 58; *Longman* v. *East*, 3 C. P. D. 142; *supra*, note (*b*) at pp. 1016, 1017; as to its adoption and enforcement by the Court, see 36 & 37 Vict. c. 66, s. 56; *supra*, note (*b*) at p. 1017. When a reference has been made to a referee, the parties are entitled to take the opinion of the Court on his report; accordingly, a motion by a plaintiff to adopt the referee's report, and for an order on the defendant to pay a certain sum accordingly, was ordered to stand over for a fortnight, and the defendant was directed to give notice to the plaintiff of how much of the report he objected to; *Wood* v. *Barnicott*, W. N. (1878) 25. It will not always be necessary to give this notice of motion; if the reference has been directed at the trial of the action, and further consideration was reserved, the proper course will be to set down the action for hearing on further consideration; see *ante* pp. 682—686. Where a motion is necessary, it would seem to be a motion for judgment; it will not therefore be brought on as an ordinary motion, but must be set down in the cause book; Registrar's notice of April, 1876; *ante*, note (*n*) at p. 454. As to the time within which the action must be set down on motion for judgment, see R. S. C. Ord. XL. 7, 9; note (*b*) to No. 818 *ante*; for forms of application to enlarge the time for setting down, and for leave to set down the action after the expiration of the time allowed, see *ante*, Nos. 818 and 819. As to setting down and hearing the action on motion for judgment, see *ante*, pp. 454 to 457. For form of order on the hearing of the motion, see Seton, ed. 4, p. 394, No. 3.

1917.
Notice of motion to set aside report and remit cause or matter to referee (*v*).

Formal parts: see ante No. 1571.

on the part of the plaintiff [*or as may be*], that the report, dated the —— day of ——, 187—, of X. Y., esquire, the Official [*Or*, Special] Referee in this cause [*Or*, matter], may be set aside [*If it is desired that part only of the report should be set aside, state what part, as in* No. 1916 *ante*]. And that the question by the order made in this cause [*Or*, matter], and dated the —— day of ——, 187—, referred to the Official Referee in rotation [*or as may be; as in order*], to inquire and report [*Or*, directed to be tried before the Official Referee in rotation [*or as may be; as in order*]], may be remitted to the said Mr. X. Y. for reconsideration.

1918.
Motion paper that report may be set down for hearing as a special case (*w*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff [*or as may be*], that the report [*Or*, the statement], dated the —— day of ——, 187—, of X. Y., esquire, the Official [*Or*, Special] Referee in this cause [*Or*, matter], whereby questions are submitted [*Or*, facts are stated] for the decision of the Court, pursuant to the Rules of the Supreme Court, Ord. XXXVI., rule 34, may be set down for hearing as a special case for the decision of the Court.

1919.
Memorandum on setting down report (*x*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title of cause or matter, and reference to record.*]

Set down the report [*Or*, statement], dated —— day of ——, 187—, of Mr. X. Y., the Official [*Or*, Special] Referee in this cause [*Or*, matter] for hearing as a special case.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party setting down; see ante* No. 92.]

1920.
Notice of having set down report (*y*).

Formal parts: see ante No. 21.

Take notice that I have this day set down [*Continue as in* No. 1919 *ante, to end*].

(*v*) As to the force and effect of a referee's report, see 36 & 37 Vict. c. 66, ss. 56, 58; *Longman* v. *East*, 3 C. P. D. 142; *supra*, note (*b*) at pp. 1016, 1017; as to the power of the Court to remit the cause or matter to the referee for reconsideration, see 17 & 18 Vict. c. 125, s. 8; 36 & 37 Vict. c. 66, s. 59; *supra*, note (*b*) at p. 1017. The motion should be supported by an affidavit, or some evidence of what took place before the referee; *Stubbs* v. *Boyle*, 2 Q. B. D. 124.

(*w*) As to the power of the referee to submit a question, or state facts, for the decision of the Court, and as to the power of the Court thereupon, see R. S. C. Ord. XXXVI. 34; and *supra*, note (*b*) at p. 1017.

(*x*) See note (*l*) to No. 806 *ante*.

(*y*) See note (*m*) to No. 807 *ante*. For forms of subsequent proceedings, see *ante* Nos. 809, 810, and see the notes thereto.

Section II.—References for Decision (*a*).

(1.) *Making an Agreement to refer an Order of the Court* (*b*).

(*a*) The old practice before the Judicature Acts of referring matters in dispute for decision, is not repealed by, but exists alongside of, the new practice introduced by the Supreme Court of Judicature Act, 1873, ss. 56, 57, of referring questions for report; *Cruikshanks* v. *Floating Baths Co.*, 1 C. P. D. 260; *per* Brett, L. J., in *Longman* v. *East*, 3 C. P. D. 142, at pp. 152, 153; note (*a*) at p. 1015, *supra*. The reference of a matter in dispute for decision may be either compulsory, or by agreement. (I.) Compulsory references: under the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 3, 6, a superior Court of common law, or a Judge thereof, had power to refer a cause to an arbitrator appointed by the parties, or to an officer of the Court, on the ground that the matters in dispute consisted wholly, or in part, of matters of mere account, which could not be conveniently tried in the ordinary way; see *Clow* v. *Harper*, 26 W. R. 364. This power of compulsory reference to arbitration may now be exercised by the High Court, and every Judge thereof; 36 & 37 Vict. c. 66, s. 76; it is apprehended, however, that it will not become the practice of the Chancery Division to refer causes to arbitration under the above enactment, inasmuch as matters of account may be conveniently disposed of in that division through its ordinary officers, namely, the Chief Clerks of the Judges; 15 & 16 Vict. c. 80, s. 29; Cons. Ord. XXXV. 33, 46; the district registrars; 36 & 37 Vict. c. 66, s. 66; or a referee; *Ibid.*, s. 57; and, as matters of account arising in the common law divisions of the Court may now be referred for report to a referee; 36 & 37 Vict. c. 66, s. 57; or accounts may be taken before a district registrar; *Ibid.*, s. 66; it is possible that compulsory references for decision under the 17 & 18 Vict. c. 125, ss. 3, 6, will not be so frequent in those divisions as hitherto. No forms relative to such references in particular have, for these reasons, been inserted in this work. (II.) References by agreement: such a reference may take place either (1) by the agreement of the parties, that certain then existing or future differences shall be referred to arbitration: in which case the agreement may, unless the parties have stipulated to the contrary, be made a rule of the High Court, which thus acquires a certain control over the conduct of the arbitration, although no action may have been brought between the parties; it being provided that the proceedings upon such an arbitration shall, unless it is otherwise agreed by the parties, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator, and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference by consent under a rule of Court or Judge's order; 17 & 18 Vict. c. 125, ss. 7, 17; or (2) by an order of the Court, made by consent in a pending action.

(*b*) For forms of submission to arbitration, see Chitty, Forms, pp. 913, 914. As to making a submission to arbitration a rule of Court, see 9 & 10 Wm. III. c. 15, s. 1; Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 17; Dan. Pr. 1901, 1902. As to the proceedings upon such an arbitration, see 17 & 18 Vict. c. 125, s. 7; *supra*, note (*a*).

1921.

Motion paper or notice of motion to make agreement to refer an order of the Court (*c*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of an arbitration between A. B. and C. D.
And in the matter of the Common Law Procedure Act, 1854.

[*If the application is made ex parte, say:*] To move on behalf of
[*If the application is made on notice, say:*] Take notice [*&c.; Continue as in* No. 1571 *ante, to* counsel] on the part of
[*In either case proceed thus:*] the above-named A. B. [*or as may be*], of [*residence and addition*], that the submission to arbitration contained in [*Describe the document, as thus:*] an indenture dated the —— day of ——, 187—, and made between the said A. B. of the one part, and C. D., of [*residence and addition*], of the other part, may be made an order of this Court, to be observed and performed according to the tenor and true meaning thereof.

1922.

Affidavit, verifying signatures to the submission (*d*).

Title as in No. 1921 *ante; other formal parts as in* No. 693 *ante.*

1. On the —— day of ——, 187—, I saw A. B. and C. D., the parties to the parchment [*Or*, paper] writing dated the —— day of ——, 187—, now produced and shown to me, and marked F. (*e*), and purporting to be a submission of certain matters to arbitration, duly sign, seal, and as their respective acts and deeds deliver [*Or, if not under seal, say:* duly sign] the said exhibited document.

2. The names or signatures "——" and "——," respectively set and subscribed to the said parchment [*Or*, paper], writing, are of the proper handwriting of the said A. B. and C. D., respectively. [3.

(*c*) See 9 & 10 Wm. III. c. 15, s. 1; 17 & 18 Vict. c. 125, s. 17; Dan. Pr. 1901, 1902. As to when the application should be *ex parte* and when on notice, see Dan. Pr. 1902. For form of affidavit in support, see *post* No. 1922. For order in like case, see *Ex parte Clerk*, V.-C. K.-B., 1 Aug. 1846, Reg. Lib. A. 2039; *Re Camb. Univ.*, V.-C. W., 19 Mar. 1856, Reg. Lib. A. 856; *Re Haigh*, V.-C. K., 20 Nov. 1856, Reg. Lib. A. 1010; *Re Walton Shore Road*, V.-C. S., 18 Jan. 1866, Reg. Lib. B. 2233. The order will not be passed by the Registrar, until the submission to arbitration has been filed in the report office, and a note thereof made on the order by the clerk of reports; Cons. Ord. XXIII. 23. As to the course to be pursued where the submission is directed to be filed with the Clerks of Records and Writs, see Dan. Pr. 1902, note (*y*).

(*d*) This affidavit is not necessary if the application is consented to; Dan. Pr. 1902.

(*e*) For form of memorandum of exhibit, see *ante* No. 723.

3. The name or signature "——," set and subscribed to the attestation of the signatures of the said A. B. and C. D., indorsed on [*Or*, written under] the said parchment [*Or*, paper] writing, is of my proper handwriting.

(2.) *Referring a Cause to Arbitration* (*f*).

1923. Notice of motion or summons to refer a cause to the arbitration of a single arbitrator (*g*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of the plaintiff [*or as may be*], that, by consent, this cause [*If so, add:* and all matters in difference between the parties thereto] may be referred to the arbitrament and final determination of S. Y., of, *&c.*, on the terms following, namely:

1. That the said arbitrator make his award in writing, on or before, *&c.*; or within such further time as he shall appoint.
2. That all deeds, books and papers in the custody or power of any of the parties, relating to the matters in question, be produced before the said arbitrator, as he shall direct: to be ascertained by the oaths of the respective parties producing the same.
3. That the parties and their witnesses: being first sworn: be examined, as the said arbitrator shall direct.
4. That the costs of this cause, and of this application, and of the reference hereby directed, be in the discretion of the said arbitrator.
5. That no action or other proceeding be brought or taken, by any of the parties hereto, against the said arbitrator, for any matter or thing he shall do in or about, or touching any of the matters hereby referred to him.
6. That the said arbitrator have power from time to time to enlarge the time for making his award: as he shall think fit.
7. That either of the parties hereto be at liberty to make such award an order of this Court.

1924. The like, to two arbitrators or their umpire (*h*).

[*Proceed as in* No. 1923 *ante, to* final determination; *and continue thus:*] of S. Y., of, *&c.*, a person for this purpose nominated by the plaintiff, and of T. Z., of, *&c.*, a person for this purpose nominated by the defendant, or, in case of the said S. Y. and

(*f*) See note (*a*) at p. 1025, *supra*.

(*g*) For order in like case, see *Hogg* v. *Pearson*, V.-C., 23 Nov. 1814, Reg. Lib. A. 474; *Corbett* v. *Fox*, V.-C. S., 8 Dec. 1866, Reg. Lib. A. 2786; *Blagrave* v. *Blagrave*, V.-C. W., 22 July, 1862, Reg. Lib. A. 1710.

(*h*) For order in like case, see *Edwards* v. *Edwards*, V.-C. S., 28 July, 1856, Reg. Lib. A. 1589.

T. Z. not agreeing to an award, then to the arbitrament and final determination of such umpire as shall be appointed by them, the said S. Y. and T. Z., in the manner hereinafter mentioned. And that such arbitration may be upon the terms following; namely:

1. That the said arbitrators make their award in writing on or before the —— day of ——, 187—, or on or before such further day as they, the said arbitrators, shall, from time to time, by any writing under their hands, appoint.

2. That, in case of the said arbitrators not agreeing in an award, the said umpire make his award in writing within the period hereinafter mentioned, that is to say, within three calendar months after the expiration of the time within which the said arbitrators shall have had power to make an award, or within such extended time after the expiration of the said period of three calendar months, as the said umpire shall, from time to time, by any writing under his hand, appoint.

3. That all deeds, books, and papers in the custody or power of any of the parties, relating to the matters in question, be produced before the said arbitrators and umpire, as the said arbitrators or umpire, respectively, shall direct: to be ascertained by the oaths of the respective parties producing the same.

4. That the parties and their witnesses: being first sworn: be examined as the said arbitrators or umpire, respectively, shall direct.

5. That the costs of this cause, and of this application, and of the reference hereby directed, be in the discretion of the said arbitrators and umpire, or of such of them as shall award upon the matters in difference.

6. That no action or other proceeding be brought or taken by any of the parties hereto against the said arbitrators and umpire, or any of them, for any matter or thing they, or any of them, shall do in or about or touching any of the matters hereby referred to them.

7. That before the said arbitrators enter upon the matters hereby referred to them, they do, by writing under their hands, appoint some person, approved of by them, to be such umpire as aforesaid. And that such umpire do, by writing under his hand, signify his acceptance of such appointment.

8. That either of the parties hereto be at liberty to make the award of the said arbitrators, or of the said umpire, an order of this Court.

(3.) *Proceedings upon the Reference to Arbitration* (*j*).

1925. Appointment of arbitrator where no person named in the submission.

Whereas, by an agreement in writing dated the —— day of ——, 187—, and made between A. B., of [*address and description*], of the one part, and C. D., of [*address and description*], of the other part, it was agreed that [*Recite the agreement of reference, as thus:*] all disputes and matters in difference between the said A. B. and the said C. D. should be referred to the arbitrament and final determination of two fit and indifferent persons, to be elected and chosen, one by the said A. B. and the other by the said C. D.: Now I, the said A. B. do hereby nominate and appoint X. Y., of [*address and description*], to be the arbitrator on my part to settle and determine all disputes and matters in difference between me and the said C. D.

Dated —— day of ——, 187—.

1926. Notice of appointment of arbitrator.

Take notice that, pursuant to the agreement dated the —— day of ——, 187—, and made between me, the undersigned A. B., of the one part, and you, C. D., of the other part, I have nominated and appointed X. Y., of [*address and description*], to be the arbitrator on my part to settle and determine all disputes and matters in difference between me and you, the said C. D.

Dated —— day of ——, 187—.

A. B.,
of [*address and description*].

To C. D.,
of [*address and description*].

1927. Appointment of umpire or third arbitrator (*k*).

Whereas [*Recite the submission to arbitration and the provisions, if any, for the appointment of an umpire or third arbitrator; see ante* No. 1925]. Now we, the arbitrators duly appointed to act, and acting, in the reference under the said submission, do hereby,

[*If the appointment is made under the provisions of the submission, say:*] in pursuance of the said submission and in exercise of the powers thereby conferred upon us,

[*If the appointment is made under the Common Law Procedure Act, 1854* (*l*)*, s. 14, say:*] in exercise of the powers conferred upon us by the 14th section of the Common Law Procedure Act, 1854,

and of any other power us enabling in that behalf, nominate and

(*j*) See Chitty's Arch. pp. 1649 *et seq.*; *Bottomley* v. *Ambler*, 26 W. R. 566. The Court has jurisdiction to restrain an arbitrator from proceeding with a reference which he is unfit or incompetent to hear; *Malmesbury Railway Co.* v. *Budd*, 2 Ch. D. 113; *Beddow* v. *Beddow*, 26 W. R. 570.

(*k*) As to the power of two arbitrators to appoint an umpire, where it does not appear that it was intended there should not be an umpire, and where there is no provision for the appointment of an umpire, see C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 14.

(*l*) 17 & 18 Vict. c. 125.

appoint P. Q., of [*residence and addition*], to be and act as umpire [*Or*, third arbitrator] in the reference under the said submission.

Dated —— day of ——, 187—.

1928.

Notice to appoint an arbitrator under the Common Law Procedure Act, 1854, sec. 13 (*m*).

Take notice [*Proceed as in* No. 1926 *ante, down to* the said C. D.]. And take further notice that I do hereby require you to appoint an arbitrator on your part to act as arbitrator under the said agreement

[*If so, add :*] in lieu and stead of T. Z., who has died [*Or*, has refused to act as such arbitrator; *Or*, has become incapable of acting as such arbitrator]

And take further notice that, in the event of your failure to appoint an arbitrator as aforesaid, for seven clear days after the service of this notice upon you, I shall appoint the said X. Y. to act as sole arbitrator in the reference under the said agreement.

Dated [*Conclude as in* No. 1926 *ante*].

1929.

Summons to extend time for appointing arbitrator (*n*).

[*If a cause has by order been referred to arbitration, the application should be intituled in the cause. If there is no cause pending the application should be intituled as* No. 1921 *ante.*]

Let all parties concerned [*Proceed as in* No. 865 *or* No. 881 *ante, to* application] on the part of the above-named C. D., of [*address and description*], that he may have —— days next after the date of the order to be made hereupon to appoint an arbitrator on his part, to act as arbitrator under the submission to arbitration contained in an agreement dated the —— day of ——, 187—, and made between A. B. of the one part and C. D. of the other part.

(*m*) Where the reference is, or is intended to be, to two arbitrators, one appointed by each party, and one party fails to appoint an arbitrator, either originally, or by way of substitution for an arbitrator dying, or refusing or becoming incapable to act, for seven clear days after the other party has appointed an arbitrator, and has served the party failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator, may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him will be binding on both parties to the reference, as if the appointment had been by consent; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 13. But the Court or Judge may revoke such appointment; *Ibid.*; and *post* No. 1931.

(*n*) See C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 13; note (*m*) to No. 1928 *ante*. If the application is made in a cause, it is made by an ordinary summons, as to which, see *ante* No. 881, and notes thereto; if not made in a cause, then if an order has previously been made in the matter of the arbitration, the application should be made by an ordinary summons: otherwise it must be made by an originating summons, as to which, see *ante* Nos. 865—880, and notes thereto. For orders in like case, see *Plews* v. *Baker*, V.-C. B., 1873, Reg. Lib. B. 2296; *Gillett* v. *Thornton*, V.-C. H., 1875, Reg. Lib. A. 205.

1930.
Appointment of sole arbitrator under C. L. P. Act, 1854, sec. 13 (*o*).

Whereas [*Recite the agreement or order of reference; as in* No. 1925]. And whereas, on the —— day of ——, 187—, I, the said A. B., by writing under my hand, nominated and appointed X. Y., of [*address and description*], to be the arbitrator on my part to settle and determine all disputes and matters in difference between me and the said C. D. And whereas, by a notice in writing served on the said C. D. on the —— day of ——, 187—, the said C. D. was required to appoint an arbitrator on his part to act as arbitrator under the said agreement [*or as may be*]. And whereas the said C. D. has for seven clear days after the service of the said notice failed to appoint an arbitrator on his part as aforesaid. Now I, the said A. B., do hereby by virtue and in pursuance of the provisions contained in the 13th section of the Common Law Procedure Act, 1854 (*p*), and of any other powers me enabling in that behalf, nominate and appoint the said X. Y. to be and act as sole arbitrator in the reference under the said agreement [*Or*, order].

Dated —— day of ——, 187—.

1931.
Notice of motion or summons to revoke appointment of sole arbitrator (*q*).

As to the title, see ante No. 1929.

[*If the application is made by motion, say:*] Take notice [*&c.; Continue as in* No. 1571 *ante, to* counsel]

[*If by summons* (*r*), *say:*] Let all parties [*&c.; Continue as in* No. 865 *or* No 881 *ante, to* application]

[*In either case, continue thus:*] on the part of the above-named C. D., that the appointment by the above-named A. B. of X. Y. to act as sole arbitrator, to whom all matters in difference [*or as may be*] between the said A. B. and C. D. shall be referred in pursuance of the submission between them [*Or*, of the order] dated the ——, 187—, may be revoked. And that the said matters in difference may be referred to the said X. Y., jointly with T. Z., of [*residence and addition*], as the arbitrators of the said A. B. and C. D. respectively.

1932.
Notice to concur in appointing arbitrator, umpire, or third arbitrator, under Com. Law Proc. Act, 1854, sec. 12 (*s*).

Take notice that you are hereby required

[*If the appointment is to be made by the arbitrators, add:*] as the arbitrators acting under and by virtue of a certain submission to arbitration, dated the —— day of ——, 187—, and made between A. B. and C. D.,

(*o*) See C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 13; note (*m*) to No. 1928 *ante*.

(*p*) 17 & 18 Vict. c. 125.

(*q*) See C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 13; note (*m*) to No. 1928 *ante*.

(*r*) As to when the application should be by originating summons, see note (*n*) to No. 1929 *ante*.

(*s*) If, in any case of arbitration, the document authorising the reference

to concur [*If so, add:* with me], on or before the —— day of ——, 187—, in appointing an arbitrator [*Or*, umpire ; *Or*, third arbitrator] to act in the reference under the said submission [*Or*, under a certain submission [*&c., as above*]],

[*If the appointment is to be made in the place of a person refusing or incapable to act, or who has died, add:*] in lieu and stead of T. Z., who has died [*or as may be*].

Dated —— day of ——, 187—.

To [*Address the notice to the arbitrators, if the appointment is to be made by them; to the parties to the submission, if the appointment is to be made by them*].

1933. Summons for such appointment to be made on default (*t*).

Title and other formal parts: see ante No. 1929.

on the part of the above-named A. B., that X. Y., of [*residence and addition*], may be appointed to act as arbitrator [*Or*, umpire ; *Or*, third arbitrator] under the submission to arbitration dated the —— day of ——, 187—, and made between the above-named A. B. and C. D.

[*If so, add:*] the said X. Y. to act in the place of T. Z., who has died [*or as may be*].

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provide that the reference shall be to a single arbitrator, and all parties do not concur in the appointment of an arbitrator; or if an appointed arbitrator refuse to act, or become incapable of acting, or die, and the parties do not concur in appointing a new one; or if, where the parties, or two arbitrators, are at liberty to appoint an umpire, or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if an appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the parties or arbitrators respectively do not appoint a new one; in every such case, any party may serve the remaining parties, or the arbitrators, as the case may be, with a notice in writing to appoint an arbitrator, umpire, or third arbitrator respectively; and if, within seven clear days after such notice has been given, no arbitrator, umpire, or third arbitrator be appointed, any Judge of a superior Court of law or equity (now, of the High Court of Justice; 36 & 37 Vict. c. 66, s. 76), upon summons to be taken out by the party serving such notice, may appoint an arbitrator, umpire, or third arbitrator, as the case may be; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 12. An arbitrator, umpire, or third arbitrator, so appointed, has the like powers as if he had been appointed by consent; *Ibid.*

(*t*) See C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 12; note (*s*) to No. 1932 *ante*. As to when the application should be by originating summons, see note (*n*) to No. 1929 *ante*. For order in like case, see *Re Attwaters & Skittlers Arbitration*, M. R. at Chambers, 23 Feb. 1875, Reg. Lib. A. 25.

1934.

Appointment to proceed with reference.

In the matter of an arbitration between A. B. and C. D.

I appoint ——day, the —— day of ——, 187—, at —— of the clock in the forenoon, at [*State where, as :*] my Chambers, No. ——, Old Square, Lincoln's Inn, Middlesex, to proceed with this reference.

Dated —— day of ——, 187—.

X. Y.,
Arbitrator.

To the above-named A. B. and C. D., and to Messrs. ——, solicitors for the said A. B., and Mr. ——, solicitor for the said C. D.

1935.

The like, with notice that arbitrator will proceed *ex parte* (*u*).

[*Proceed as in* No. 1934 *ante, down to* reference; *and continue thus :*] And I give notice that in case either party shall fail to attend at the time and place above-mentioned, I shall proceed with the said reference *ex parte*.

Dated [*Continue as in* No. 1934 *ante, to end*].

1936.

Motion paper for order for attendance of witnesses (*v*).

As to the title, see No. 1929 *ante*.

To move on behalf of the above-named A. B. [*or as may be*], that G. H., of, *&c.*, I. K., of, *&c.*, and L. M., of, *&c.*, may be ordered and commanded to attend before X. Y., esquire, the arbitrator herein, on ——day, the —— day of ——, 187—, and —— day, the —— day of ——, 187—, at —— of the clock in the forenoon of each of the same days, at [*State where*], and then and

(*u*) As to proceeding *ex parte* where a party fails to attend, see Russell on Arbitrators, ed. 5, p. 195.

(*v*) Where a reference has been made by rule or order, or by a submission containing an agreement that the submission shall be made a rule of Court, the Court or a Judge may, by order, command the attendance and examination of any person to be named, or the production of any documents to be mentioned, in such order, and disobedience to such order will be deemed a contempt of Court, if, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire before whom the attendance is required, be also served either together with or after the service of the order; 3 & 4 Wm. IV. c. 42, s. 40. The application must set forth the county where the witness is residing at the time; *Ibid.;* and no witness can be compelled to attend at more than two consecutive days to be named in the order; *Ibid.;* nor to produce any document which he would not be compelled to produce at a trial; *Ibid.* Every witness is entitled to conduct money, and payment of expenses, and for loss of time, as for attendance upon a trial; *Ibid.* The

there to submit to be examined upon oath, affirmation or declaration on the part and behalf of the said A. B.

[*If it is desired that any witness should produce documents, add:*] And that the said G. H. may be ordered and commanded to bring with him and produce at the times and places aforesaid the following documents, that is to say: [*Here specify the documents as in a subpœna duces tecum* (*w*)].

1937.

Petition of course for like (*x*).

Formal parts: see ante No. 1576; *as to the title see ante* No. 1929.

1. [*State the submission to arbitration; as thus:*] By an agreement in writing dated the —— day of ——, 187—, and made between the above-named A. B., of the one part, and the above-named C. D., of the other part, it was agreed that all disputes and matters in difference between the said A. B. and the said C. D. should be referred to the arbitrament and final determination of X. Y. And that the submission to arbitration contained in the said agreement should be made an order of this honourable Court.

2. The said X. Y. has duly taken upon himself the burthen of the said reference.

3. Your petitioner is advised that G. H., of, *&c.*, J. K., of, *&c.*, and L. M., of, *&c.*, are material and necessary witnesses for him touching the matters referred as aforesaid.

4. The said G. H. has in his possession or control the following documents relating to the matters referred as aforesaid, which your petitioner is advised it is material and necessary for his case should be produced before the said arbitrator, that is to say: [*Here specify the documents as in a subpœna duces tecum* (*y*).

Your petitioner therefore humbly prays, that the said G. H., J. K., and L. M. may be [*Continue as in* No. 1936 *ante, to end, substituting* "your petitioner" *for* "the said A. B."; *and* "the said documents" *for the specification of the documents*].

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application for the order is by motion or petition of course; *Re Ricketts*, 3 N. R. 56; 9 L. T. N. S. 405. For order in like case on motion, see *Re Ricketts, ubi supra.* As to the mode of serving an order, see note (*g*) to No. 1264 *ante.*

(*w*) As to the mode of describing the documents, see *ante* No. 567, and note (*d*) thereto.

(*x*) See note (*v*) to No. 1936 *ante.*

(*y*) As to the mode of describing the documents, see *ante* No. 567, and note (*d*) thereto.

[*Same as* Nos. 646 *to* 660 *ante, substituting* "to me" *for* "to the Court," *and* "touching the matters in difference between A. B. and C. D., referred to me" *for* "touching the matters in question."]

1938. Oaths, affirmations, and declarations of witnesses examined before an arbitrator (*z*).

1939. Enlargement by arbitrator or umpire, of time for making award (*a*).

We, X. Y. and T. Z., being the arbitrators duly appointed to act, and acting, in the reference under a submission to arbitration contained in an agreement dated the —— day of ——, 187—, and made between A. B. of the one part, and C. D. of the other part [*or as may be*], do hereby (further) enlarge the time for making our award under the said reference until the —— day of ——, 187—.

Dated —— day of ——, 187—.

1940. Consent that time for making award be enlarged (*a*).

We, the undersigned A. B. and C. D., being the parties to an agreement, dated the —— day of ——, 187—, whereby [*Recite the submission to arbitration, as thus:*] all matters in difference between us were referred to the arbitrament and final determination of X. Y. and T. Z., do hereby consent that the time for the said arbitrators to make their award under the said submission be (further) enlarged to the —— day of ——, 187—.

Dated —— day of ——, 187—.

1941. Summons to enlarge time for making award (*a*).

Formal parts: as in No. 865 *or* No. 881 *ante; as to the title, see* No. 1929 *ante.*

on the part of the above-named A. B. [*or as may be*], of [*address and description*], that the time limited by the submission to arbitration contained in [*State what; as thus:*] the agreement, dated the —— day of ——, 187—, and made between A. B. of the one part, and C. D. of the other part, for the arbitrators [*Or.* umpire] to make and publish their [*Or,* his] award in pursuance thereof, may be (further) enlarged to the —— day of ——, 187—, on the ground that [*State cause for enlargement*].

(*z*) As to the authority of an arbitrator to administer an oath, see 3 & 4 Wm. IV. c. 42, s. 41; 14 & 15 Vict. c. 99, s. 16.

(*a*) An arbitrator or umpire has no power to enlarge the time for making the award, unless such power be conferred upon him by the submission; but the parties to a submission may, by consent in writing, enlarge the term for making the award; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 15; or the Court of which the submission or order is or may be made an order,

1942.

Formal parts of an award (*d*).

To all to whom these presents shall come : I, E. F., of [*residence and addition*], send greeting :

Whereas [*Recite the agreement or submission, or so much of its terms as may be essential to show the authority of the arbitrator, or umpire, with respect to the subject matter of reference, and the time, power of enlargement, and manner of making the award. Recite the enlargements, if any ; and continue thus :*]

Now know ye, that I, the said E. F., having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference, and so referred as aforesaid, do make and publish this my award in writing of and concerning the said matters so referred to me ; and do hereby award [*&c. : Conclude with a distinct statement of the arbitrator's decision on all the points referred to him*]. In witness whereof I have hereunto set my hand [*If so :* and seal] this —— day of ——, 187—.

E. F.

Witness to the signature of the said E. F. [*Or,* Signed, sealed, and delivered by the said E. F. in the presence of] :
G. H., of [*residence and addition*].

1943.

Notice of publication of award.

In the matter of an arbitration between A. B. and C. D.

Gentlemen,

I hereby give you notice that I have made and published my award in writing in this matter, and that it lies at [*State where*], ready to be delivered upon payment of my charges amounting to £——.

Dated —— day of ——, 187—.

To A. B. and C. D., and to Messrs. ——, solicitors for the said A. B., and to Mr. ——, solicitor for the said C. D.

E. F.

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or any Judge thereof, may, for good cause to be stated in the order for enlargement, from time to time enlarge the term for making the award ; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 15. As to when an application under the 15th section should be made by an originating summons, see note (*n*) to No. 1929 *ante*. For order in like case, see *Blagrave* v. *Blagrave*, V.-C. W. at Chambers, 30 June, 1865, Reg. Lib. A. 1328 : on certificate of arbitrator that further time was needed.

(*d*) For forms of awards, see Russell on Arbitrators, pp. 775 to 822.

1944.

Notice of motion to make award an order of Court (*e*).

Formal parts: see No. 1571 *ante; as to the title, see ante* No. 1929.

on the part of the above-named A. B. [*or as may be*], that the award of E. F., the arbitrator [*Or,* umpire] acting under the submission to arbitration contained in [*State what; as in* No. 1939 *ante*], may be made an order of this Court, to be observed and performed by all parties to the said submission, according to the tenor and true meaning thereof.

1945.

Affidavit of publication of an award.

Title, see No. 1929 *ante; other formal parts: see* No. 693 *ante.*

1. On the —— day of ——, 187—, I saw E. F., of [*residence and addition*], sign and publish [*Or,* sign, seal, and publish] his award in this matter dated the —— day of ——, 187—, and now produced and shown to me, and marked G. (*f*).

2. The name or signature "——," set and subscribed to the said award, as the party executing the same, is of the proper handwriting of the said E. F.

3. The name or signature "——," set and subscribed to the attestation, written at the foot of the said award, of the execution thereof by the said E. F., is of my proper handwriting.

1946.

Notice of motion to set aside an award (and judgment entered in pursuance thereof) (*g*).

Formal parts: see ante No. 1571; *as to the title, see ante* No. 1929.

on the part of the above-named A. B. [*or as may be*], that the award of E. F. the arbitrator [*Or,* umpire] acting under the sub-

(*e*) The application must be supported by an affidavit of the publication of the award; for form, see *post* No. 1945. For order in like case, see *Duxbury* v. *Isherwood,* V.-C. W., 4 May, 1865, Reg. Lib. A. 914; Seton, ed. 4, p. 403. The order will not be passed by the Registrar, until the award has been filed in the Report Office, and a note of filing made on the order; Cons. Ord. XXIII. rule 23. As to the modes of enforcing an award, see Russ. Arb., pp. 521, 582, 615, 628; *Lloyd* v. *Lewis,* 2 Exch. D. 7.

(*f*) For form of memorandum of exhibit, see *ante* No. 723.

(*g*) As to setting aside an award, see Russ. Arb., pp. 647 to 695. The application must be made before the last day of the next term after the making and publishing of the award; 9 & 10 Wm. III. c. 15, s. 2; for the purposes of this section, the old division of the legal year into terms is kept on foot by the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 26; *Re Governors of Christ's College, Brecknock, and Martin,* 3 Q. B. D. 16. It is sufficient if the notice of motion is served before the last day of term, though it can not be heard until after that day; *Re Corporation of Huddersfield* v. *Jacomb,* L. R. 10 Ch. 92.

mission to arbitration contained in [*State what; as in* No. 1939 *ante*]

[*Where the reference was in an action, and judgment has been entered in the action, in accordance with the award* (*h*), *add:*] and also the judgment entered in this action on the —— day of ——, 187—

may be set aside on the following grounds, namely: [*State them*].

1947.

Notice of motion to remit matters to arbitrator (*j*).

Formal parts: as in No. 1944 *ante.*

on the part of the above-named A. B. [*or as may be*], that the matters referred to the arbitrament of X. Y., by the submission to arbitration contained in [*State what; as in* No. 1939 *ante*], may be remitted to the reconsideration and redetermination of the said X. Y., to arbitrate upon the following matters referred to him, but not arbitrated upon or determined in his award, namely: [*Specify the matters not arbitrated upon*].

1948.

Another form (*k*).

[*Proceed as in* No. 1947 *ante, down to* remitted; *and continue thus:*] to the said X. Y., to supply an accidental omission in one part of his award, of the words "taken in due form of law as aforesaid and," and of the word "satisfy;" and for a direction therein that if one of the parties to the said reference should pay the whole of the fees and compensation of the third arbitrator, the other party should repay him a moiety thereof; and also for the re-execution of the said award.

(*h*) Where an action has been referred to an arbitrator under the C. L. P. Act, 1854, judgment may be entered in accordance with the award, without motion for judgment; *Lloyd* v. *Lewis*, 2 Ex. D. 7.

(*j*) The Court or Judge has power at any time, and from time to time, to remit the matters referred, or any of them, to the reconsideration and redetermination of the arbitrator, upon such terms as to the Court or Judge may seem proper; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 8. As to this enactment, see Dan. Pr. 1905.

(*k*) See note (*j*) to No. 1947 *ante*. For order in like case, see *Re Walton Shore Road*, V.-C. S., 20 Dec. 1866, Reg. Lib. B. 2709; 15 W. R. 303; S. C. *sub nom.*, *Re Warner and Powell*, L. R. 3 Eq. 261.

1949. Motion paper to set down award as special case (*k*).

Title, as in No. 1929 *ante.*

To move on behalf of the above-named A. B. [*or as may be*], that the award, dated the —— day of ——, 187—, of X. Y., the arbitrator acting under the submission to arbitration contained in [*State what: as in* No. 1939 *ante*], may be set down for hearing as a special case upon the questions thereby submitted for the opinion of this Court.

1950. Memorandum on setting down award (*l*).

Title, as in No. 1929 *ante.*

Set down the award, dated the —— day of ——, 187—, of Mr. X. Y., the arbitrator in this matter [*Or,* cause].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party setting down; as in* No. 92 *ante.*]

1951. Notice of having set down the award (*m*).

Title, as in No. 1929 *ante; other formal parts: see ante* No. 21.

Take notice that I have this day set down [*Continue as in* No. 1950 *ante, to end*].

(*k*) The arbitrator may state his award in the whole or in part, in the form of a special case for the opinion of the Court; C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 5. For order to set down special case for hearing, see Seton, ed. 4, 402, No. 10. As to appealing from a decision of the Court on a special case so stated, see *Jones* v. *Victoria Graving Dock Co.*, 25 W. R. 501.

(*l*) See note (*l*) to No. 806 *ante.*

(*m*) See note (*m*) to No. 807 *ante.* For forms of subsequent proceedings, see *ante* Nos. 809, 810, and see the notes thereto.

CHAPTER XXXVI.

PROCEEDINGS IN THE CHANCERY TAXING OFFICE (*a*).

(*a*) As to costs, see generally, Dan. Pr. 1238—1328; Seton, ed. 4, 124—131. As to the cases in which a party has a right to receive his costs out of a particular estate or fund, see Dan. Pr. 1271—1297; where a party would have had this right under the rules acted upon by the Court of Chancery, he has the same right under the new practice; R. S. C. Ord. LV.; where a party has not a right to costs out of a particular fund, costs are in the discretion of the Court; but where an action or issue is tried by a jury, costs follow the event, unless the Judge before whom the action or issue is tried, or the Court, shall otherwise order; R. S. C. Ord. LV. This rule is subject to the provisions of the Sup. Cot. Jud. Act, 1873, by the 67th section whereof, the 5th section of the County Courts Act, 1867 (30 & 31 Vict. c. 142), is applied to all actions in the High Court in which relief is sought, which can be given in a County Court; but all other enactments as to costs are repealed by R. S. C. Ord. LV.; *Parsons* v. *Tinling*, 2 C. P. D. 119; *Garnett* v. *Bradley* (H. of L.), 26 W. R. 698; W. N. (1878), 143; reversing S. C., 2 Ex. D. 349. As to the cases in which a party will be allowed costs as between solicitor and client, see Dan. Pr. 1299—1304; and as to the cases in which he will be allowed his costs, charges, and expenses, see Dan. Pr. 1304, 1305. For forms of orders for the taxation and payment of costs, see Seton, ed. 4, 115—124. As to what is proper to be allowed when there is a direction to tax costs, charges, and expenses, see Dan. Pr. 1304. As to what is proper to be allowed as between solicitor and client, see Dan. Pr. 1298; and where the costs are to be paid by another party, see *Ibid.*; and R. S. C. (Costs), Sched. "Special allowances and general provisions," rules 8, 13, 18, 26. As to what is proper to be allowed as between party and party, see Cons. Ord. XL. 32; R. S. C. (Costs), Sched. "Special allowances and general provisions," rules 8, 13, 18, 26; *Smith* v. *Buller*, L. R. 19 Eq. 473; *Re Lafitte*, L. R. 20 Eq. 650; *Betts* v. *Cleaver*, L. R. 7 Ch. 513; *Memorandum*, L. R. 10 Ch. 540. As to allowances in particular cases, see Dan. Pr. 1306, note (*a*); Seton, ed. 4, 627—632. For the fees allowed to solicitors, see R. S. C. (Costs), Ord. VI. and Sched.; and as to the cases in which the taxing officer has a discretion as to the allowance to be made, see R. S. C. (Costs), Sched. "Special allowances and general provisions," rules 1, 3, 4, 9, 10, 29. The taxation takes place before the taxing master in rotation; Cons. Ord. XL. 32; but, where final judgment is entered in a district registry, costs are to be taxed in the registry, unless the Court or a Judge shall otherwise order; R. S. C. Ord. XXXV. 3; the Court will not, however, except under very special circumstances, direct costs to be taxed in a district registry; *Day* v. *Whittaker*, 6 Ch. D. 734. As to the method of taxation, see Dan. Pr. 1307—1319; R. S. C. (Costs), Sched. "Special allowances and general provisions," rules 28, 30, 31, 32, 33; and *post* Nos. 1952 to 1961. As to the powers of the taxing officer to administer oaths, examine

1952. Headings of bills of costs (*b*).

In the High Court of Justice,
Chancery Division.
[*Title of the cause or matter, and reference to the record.*]
The bill of costs [*If so:* and costs, charges, and expenses] of the plaintiffs:
Or, of all the defendants:
Or, of the defendants A. B., *&c.*:
Or, of C. D., and E. F, who, by an order dated the —— day of ——, 187—, have liberty to attend the proceedings; *or as may be;*
to be taxed [*If so:* as between solicitor and client] under the judgment [*Or*, order] dated the —— day of ——, 187—.

1953. Certificate verifying copy of judgment or order (*c*).

[*Same as* No. 967 *ante.*]

witnesses, direct the production of documents, &c., see Cons. Ord. XL. 1; R. S. C. (Costs), Sched. "Special allowances and general provisions," rules 23, 24. As to his powers, where a party entitled to costs refuses or neglects to bring in his costs for taxation, see R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 25. As to his powers (without any direction from the Court) to consider whether any proceeding is unnecessary or improper, or contains unnecessary matter, and to disallow the costs thereof, see *Ibid.*, rule 18. As to setting off costs, see *Ibid.*, rule 19. On the taxation of costs the following fees are payable: where the amount allowed does not exceed £8, on the lower scale, 2*s.*; on the higher scale, 4*s.*; where the amount allowed exceeds £8, then for every £2 allowed or fraction thereof, on the lower scale, 6*d.*; on the higher scale, 1*s.*; Ord. as to Court Fees, Oct. 1875; Wilson, 502. These fees are to be taken on signing the certificate, or on the allowance of the bill of costs as taxed, and are to be paid by a stamp impressed on the certificate; but the fees will be due and payable though no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed (such amount to be fixed by the taxing officer), and in that event the proper stamps are to be affixed to the bill of costs; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522. Where, however, the costs are directed to be paid out of money in Court, or out of the proceeds of securities in Court, the above orders as to the mode of payment of the fees of taxation will not apply, but the taxing master will certify the amount of the fees of taxation, unless he shall certify that such fees are included in the costs as taxed; the Chancery Paymaster will then carry over the amount of fees so certified from the account to which the money or proceeds are placed, to a separate account in the books at the Chancery Pay Office for fees of taxation; Chancery Funds Cons. Rules, 1874, rule 58.

(*b*) A bill of costs for taxation should be written on foolscap paper bookwise, with a clear margin on the left hand side of each page, in order that the taxed off amounts may be there placed by the taxing officer in taxing the bill; Dan. Pr. 1312. As to obtaining copies of the bill, see R. S. C. (Costs), Ord. V. rules 8, 9, 12, 13, 14; *ante*, pp. 386, 387.

(*c*) See Dan. Pr. 1311. The copy should be written on foolscap paper, bookwise; and the certificate should be written in the margin of the first page; *Ibid.*

1954.
Certificate of no previous reference (*d*).

[*Short title.*]

We [*Or*, I] hereby certify, that this action [*Or*, matter] has not been already referred to any Taxing Master.

A. and B., plaintiff's solicitors [*or as may be*].

1955.
Certificate of name of Taxing Master in rotation (*e*).

——, 187—.

Mr. —— is the proper Taxing Master to whom the taxation of costs in this action [*Or*, matter] is referred.

X. Y., Sitting Master.

1956.
Warrant on leaving a bill of costs (*f*).

[*Short title.*]

By virtue of an order of reference, I do appoint to consider of the matters thereby to me referred on ——day next, at nine of the clock in the forenoon, at my Chambers in Staple Inn: at which time and place all parties concerned are to attend. Dated this —— day of ——, 187—.

X. Y.

On leaving the bill of costs [*If so:* and costs, charges, and expenses] of the plaintiff [*or as may be*]: to be taxed under the judgment [*Or*, order] dated the —— day of ——, 187—.

1957.
Warrant to tax (*g*).

[*Same as* No. 1956 *ante: varying the time for the attendance; and substituting* "To tax," *for* "On leaving."]

(*d*) This certificate should be written in the margin of the first page of the original judgment or order, and of the certified copy; Dan. Pr. 1311.

(*e*) See Dan. Pr. 1378. This certificate is written in the margin of the first page of the original judgment or order. The name of the master in rotation is filled in by the sitting master, and the certificate is signed by him. A copy of the certificate must be added to the certified copy of the judgment or order, before it is left; *Ibid.*

(*f*) As to the issuing and service of a warrant, see Dan. Pr. 1312, 1313. On issuing the warrant, a fee is payable of 2*s.* on the lower scale, and 3*s.* on the higher scale, by means of a stamp impressed upon or adhesive to the warrant; Ord. as to Court Fees, Oct. 1875; Sched.; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*g*) See Dan. Pr. 1312. As to the fee on the warrant, see note (*f*) to No. 1957 *ante*. As to the parties entitled to attend a taxation, see Dan. Pr. 1313. As to leaving the papers with the master's clerk and vouching the bill before him, see *Ibid.*, 1313, note (*y*). As to the fees of taxation, see *supra*, note (*a*) at pp. 1040, 1041. As to the practice, on a direction to tax the costs only in case the parties differ, see Cons. Ord. XL. 39; Dan. Pr. 1315. As to the apportionment of costs, see Dan. Pr. 1296, 1316.

1958.
Affidavit of service of warrant (*h*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

On the —— day of ——, 187—, I served Mr. A. B., of [*place of business*], the solicitor in this action [*Or*, matter] for the defendant C. D. [*or as may be*], with the within warrant: by delivering a true copy thereof to, and leaving the same with, the said A. B., at [*State where*]:

Or, with a clerk of the said A. B., at the address for service of the said A. B., situate at [*State where*], aforesaid:

and I, at the same time, produced and showed to the said A. B. [*Or*, to the said clerk] this original warrant.

On the oath of [*Name, &c., of the deponent*].

[*Signature of deponent.*] { Sworn before me this —— day of ——, 187—.

[*Signature of Taxing Master.*]

1959.
Statement of objections to the allowance, or disallowance, of items in a bill of costs as taxed (*k*).

In the High Court of Justice,
Chancery Division.
[*Title of the action or matter, and reference to the record.*]

Objections taken by the plaintiff [*or as may be*] to the taxation by X. Y., esquire, one of the Taxing Masters of this Court, of the bill of costs of the plaintiff [*or as may be*], under the judgment [*Or*, order] dated the —— day of ——, 187—.

The plaintiff [*or as may be*] objects, for the following reasons, to the allowance [*Or*, disallowance] of the following items; namely:

1. Because, &c., } [*Set out the reasons, in numbered*
2. Because, &c., } *paragraphs;*

And then specify, by a list in a short and concise form, the item or items, or parts or part thereof, objected to.]

(*h*) See Dan. Pr. 1313. The affidavit is indorsed on the original warrant. A fee of 1*s.* 6*d.* is payable for the oath, by means of a stamp impressed upon or adhesive to the warrant; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*k*) The certificate or allocatur of the taxing officer is final and conclusive as to all measures not objected to in the prescribed manner; R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 32; but any party who may be dissatisfied with the allowance, or disallowance, by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same; *Ibid.*, rule 30.

1960.
Warrant to proceed on the objections (*l*).

[*Proceed as in* No. 1956 *ante, to* X. Y. ; *and conclude thus :*]
To proceed on the objections taken by the plaintiff [*or as may be*] to the taxation of his bill of costs [*or as may be*], under the judgment [*Or*, order] dated the —— day of ——, 187—.

1961
Summons to review taxation (*m*).

Formal parts : see ante No. 881.
on the part of the plaintiff [*or as may be*], that the objections of the applicant, dated the —— day of ——, 187—, to the taxation of costs in this action [*Or*, matter] under the judgment [*Or*, order], dated the —— day of ——, 187—, may be allowed. And that it may be referred back to the Taxing Master to vary his certificate accordingly, and that the defendant C. D. [*or as may be*] may be ordered to pay to the applicant his costs of this application, and consequent thereupon.

(*l*) Upon an application to review as mentioned in rule 30 (note (*k*) to No. 1959), the taxing officer will reconsider and review his taxation upon such objections, and he may, if he think fit, receive further evidence in respect thereof, and, if so required by either party, he must state, either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto ; R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 31. As to issuing and service of the warrant and the fee payable thereon, see note (*f*) to No. 1956 *ante*.

(*m*) Any party who may be dissatisfied with the certificate or allocatur of the taxing master, as to any item or part of an item which may have been objected to as mentioned, *supra*, note (*k*) to No. 1959, and note (*l*) to No. 1960, may apply to a Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as to the Judge may seem just ; such application will be heard and determined by the Judge upon the evidence brought in before the taxing officer, and no further evidence will be received upon the hearing thereof, unless the Judge shall otherwise direct ; R. S. C. (Costs), Sched. "Special allowances and general provisions," rules 32, 33. For orders in like case, see *Re Searle*, M. R. at Chambers, 4 Dec. 1872, Reg. Lib. B. 3137 ; *Re Cartwright*, M. R., 13 Nov. 1875, Reg. Lib. A. 2305.

CHAPTER XXXVII.

PROCEEDINGS IN THE CHANCERY PAY OFFICE (*a*).

SECTION I.—IN GENERAL.

1962. Request for certificate of dealing with money or securities in Court (*b*).

Chancery.

To the Paymaster-General.

—— day of ——, 187—.

A certificate of the [*State the transaction of which the certificate is desired*], on the —— day of ——, of [*State the money or securities dealt with*] then standing to the credit of [*State the title of the cause or matter and account, if any*] is requested for the use of [*State for what purpose the certificate is required*].

[*Name and address of solicitor; see ante* No. 92.]

1963. Certificate of dealing with money or securities in Court (*b*).

Chancery.

Chancery Pay Office,

—— day of ——, 187—.

At the request of Mr. ——, solicitor for the ——, I hereby certify that on the —— day of —— the [*The transaction a certificate of which is desired will be here stated*].

(*a*) By the Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), the office of Accountant-General of the Court of Chancery is abolished, and her Majesty's Paymaster-General for the time being is to perform all the duties and exercise all the powers and authorities formerly performed by, or vested in, or capable of being exercised by the Accountant-General; s. 4. An office is established in the neighbourhood of the place where the Chancery division usually holds its sittings for the purpose of carrying on Chancery business; see s. 8; this office is designated the "Chancery Pay Office;" Chancery Funds Cons. Rules, rule 2. A district registrar has no power to receive money into Court; *Re Smith, Hutchinson* v. *Ward*, 6 Ch. D. 692.

(*b*) By the Chancery Funds Consolidated Rules, 1874, when securities have been purchased, sold, transferred, or delivered out, or money or securities have been carried over, or otherwise dealt with in the books of the Chancery Pay Office, the Chancery Paymaster may, in his discretion, issue a certificate thereof, upon a request in writing made by or on behalf of any person claiming to be interested in such money or securities; rule 89. The request may be either written or printed, and must have written or printed thereon the name and address of a solicitor; rule 93.

1964.
Request for certificate of fund in Court (*d*).

Chancery.

To the Paymaster-General.

—— day of ——, 187—.

A certificate of the fund in Court to the credit of [*State the title of cause, or matter, and of each account, if any*], is requested for the use of [*State for what purpose required*].

[*Name and address of solicitor; see ante* No. 92.]

1965.
Certificate of fund in Court (*d*).

Chancery.

Chancery Pay Office,

—— day of ——, 187—.

At the request of Mr. ——, solicitor for the ——, I hereby certify that there is now remaining in the books at this office, to the credit of

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1966.
Request for transcript of accounts (*f*).

Chancery.

To the Paymaster-General.

A transcript of the account in your books in [*State the title of the cause or matter, and of each account, if any*] is requested.

Dated the —— day of ——, 187—.

[*Name and address of solicitor; see ante* No. 92.]

(*d*) The Chancery Paymaster, upon a request in writing made by or on behalf of a person claiming to be interested in money or securities standing in the books of the Chancery Pay Office, to the credit of a cause or matter stated in such request, may, in his discretion, issue for the information of a Judge or an officer of the Court, a certificate of the amount and description of such money or securities; Chancery Funds Cons. Rules, 1874, rule 87; but where such money or securities stand to the credit of a cause or matter contained in the official list of funds undealt with, no information will be given by the Chancery Paymaster respecting such money or securities until he has been furnished with a statement in writing by a solicitor requiring such information of the name of the person on whose behalf he applies, and that in such solicitor's opinion the applicant is beneficially interested in such money or securities; rule 91. As to the request, see rule 93; note (*b*) to No. 1962 *ante*.

(*f*) Upon a request in writing made by or on behalf of a person claiming to be interested in money or securities standing in the books at the Chancery Pay Office to the credit of a cause or matter stated in such request, the Chancery Paymaster may in his discretion issue a transcript of the accounts in the said books in respect of such cause or matter; Chancery Funds Cons. Rules, 1874, rule 88. As to the request, see rule 93; note (*b*) to No. 1962 *ante*. For such transcript a fee is payable of 2*s*. for each opening, by means of a stamp impressed upon or adhesive to the transcript; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, 1876; Wilson, 506, 522.

1967.
Request for search for information (*g*).

Chancery.
To the Paymaster-General.
—— day of ——, 187—.
I request that a search may be made in the books of the Chancery Pay Office to supply information respecting the [*State the transaction with respect to which information is desired, and its date, or the date of the order under which it took place, &c.*].
[*Name and address of solicitor; see ante* No. 92.]

1968.
Request for negative certificate (*h*).

Chancery.
To the Paymaster-General.
—— day of ——, 187—.
A certificate that £—— cash [*Or*, Consolidated £3 per centum Annuities; *or as the case may be*] has not been paid [*Or*, transferred; *or as the case may be*] into Court to the credit of [*State the cause or matter and account, if any, to which the payment or transfer was to be made*], pursuant to the order dated [*State the date of the order*], is requested for the use of [*State for what purpose the negative certificate is required*].
[*Name and address of solicitor; see ante* No. 92.]

1969.
Negative certificate (*h*).

Chancery.
Chancery Pay Office,
—— day of ——, 187—.
At the request of Mr. ——, solicitor for the ——, I hereby certify that —— has not with the privity of the Paymaster-General paid [*Or*, transferred; *or as the case may be*] into Court to the credit of ——, the sum of —— pursuant to an order dated the ——.

(*g*) The Chancery Paymaster may in his discretion, on a request in writing, supply such information with respect to any transactions in the Chancery Pay Office as may from time to time be required in any particular case; Chancery Funds Cons. Rules, 1874, rule 90. As to the request, see rule 93; note (*b*) to No. 1962 *ante*. On the request a fee is payable of 2*s.* 6*d.* by means of a stamp impressed on the request; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*h*) Negative certificates are required for the purpose of proving that an order to bring money, securities, or effects into Court within a limited time has not been complied with. To obtain such a certificate such documents as would be required on bespeaking a direction for bringing in the money, securities, or effects, must be left at the Chancery Pay Office; Dan. Pr. 1635. As to the request, see Chancery Funds Cons. Rules, 1874, rule 93; note (*f*) to No. 1962 *ante*.

SECTION II.—PAYMENT AND TRANSFER INTO AND DEPOSIT IN COURT.

1970. Application to lodge money at the bank in an urgent case (*k*).

A. B., of [*residence and description or addition*] the plaintiff [*Or*, defendant; *Or*, a defendant; *or as the case may be*], in the cause [*Or*, matter] hereinafter mentioned, desires to lodge, pursuant to the 31st Rule of the Chancery Funds Consolidated Rules, 1874, to a Chancery Suspense Account, the sum of £——, in respect of the cause [*Or*, matter] of [*Insert short title of cause or matter, and reference to the record*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party; see ante* No. 92.]

To

The Governor and Company of the Bank of England.

1971. Request for direction for payment into Court without an order (*l*).

Chancery.

To the Paymaster-General.

A direction is requested to enable [*Name the party or person to make the payment in*] to **pay** into Court the sum of [*State the sum to be paid in*] to the credit of [*State the short title of the cause or matter, and the reference to the record in the case of a cause, and the*

(*k*) When it is desired to bring money into Court without waiting the time necessary to obtain a direction to the Bank to receive such money, it may be lodged at the Bank to a Chancery suspense account, upon a written application signed by the person desiring to lodge the same, or his solicitor, and addressed to the Bank, specifying the amount, and the title of the cause or matter in respect of which it is desired to be lodged; but the person making the lodgment, or his solicitor, must forthwith bespeak a direction from the Chancery Paymaster to the Bank to receive the money and place the same to the credit of the Chancery Pay Office account, and must produce such direction at the Bank for the purpose of having the money transferred to the Chancery Pay Office account; Chancery Funds Cons. Rules, 1874, rule 31.

(*l*) Money or securities may be paid, or transferred into, or deposited in, Court, and be placed in the books at the Chancery Pay Office to the credit of a cause or matter, on a direction to be obtained from the Chancery Paymaster upon the written request of the person desirous of so paying, transferring, or depositing, or of his solicitor, without an order; but such payment, transfer, or deposit, cannot be so made to a separate account in a cause (except to a security for costs account), unless such separate account has been directed to be opened by an order; Chancery Fund Cons. Rules, 1874, rule 25. This rule does not apply to money or securities directed by order to be paid or transferred into or deposited in Court; nor to moneys or securities payable or transferable into Court in pursuance of an act of Parliament or general orde of the Court, by which some particular authority is required to enable the

separate account, if any], pursuant to Rule 25 of the Chancery Funds Consolidated Rules, 1874. Such money not having been directed to be paid into Court by any order ; and not being money to be paid into Court in pursuance of any Act of Parliament, or General Order, by which some particular authority is required to enable the payment to be made.

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party ; see ante* No. 92.]

1972. Request for direction for transfer into Court without an order (*m*).

Chancery.

To the Paymaster-General.

A direction is requested to enable [*Name the party or person to make the transfer*] to **transfer** into Court the sum of [*Describe the securities to be transferred, and their amount*], to the credit of [*State the short title of the cause or matter, and the reference to the record, in the case of a cause, and the separate account, if any*], pursuant to Rule 25 of the Chancery Funds Consolidated Rules, 1874. Such securities not having been directed to be transferred into Court by any order ; and not being securities to be transferred into Court in pursuance of any Act of Parliament or General Order, by which some particular authority is required to enable the transfer to be made.

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party ; see ante* No. 92.]

1973. Request for direction to deposit securities in Court without an order (*n*).

Chancery.

To the Paymaster-General.

A direction is requested to enable [*Name the party or person to make the deposit*] to **deposit** in Court the following securities,

payment, transfer, or deposit, to be made ; *Ibid.*, rule 25. The request must contain the title of the cause and the reference to the record, and the correctness of the reference must be authenticated by the seal of the Clerk of Records and Writs being impressed on the request ; *Ibid.*, rule 26. As to the request, see further, *Ibid.*, rule 93 ; note (*b*) to No. 1962 *ante*. As to the mode in which the payment in is made, see *post*, note (*o*) to No. 1974. A person making a payment or transfer into or deposit in Court under rule 25, *supra*, must forthwith give notice thereof to the solicitors on the record for the parties, or in case of a matter, to the persons interested, if known, or to their solicitors; Chancery Funds Amended Ords. 1874, rule 4 ; for form of notice, see *post* No. 1993.

(*m*) See Chancery Funds Cons. Rules, 1874, rules 25, 26 ; Chancery Funds Amended Ords. 1874, rule 4 ; note (*l*) to No. 1971 *ante*. As to the securities which may be transferred into Court, and the mode in which the transfer is made, see *post*, note (*a*) to No. 1975.

(*n*) See Chancery Funds Cons. Rules, 1874, rules 25, 26 ; Chancery Funds

that is to say [*State the amount, number, and date of each bond, debenture, &c., and the total amount of each kind, as in* Nos. 1976, 1977, 1978 *post*], to the credit of [*State the short title of the cause or matter, and the reference to the record, in the case of a cause, and the separate account, if any*], pursuant to Rule 25 of the Chancery Funds Consolidated Rules, 1874. Such securities not having been directed to be deposited in Court by any order; and not being securities to be deposited in Court in pursuance of any Act of Parliament, or General Order, by which some particular authority is required to enable the deposit to be made.

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party; see ante* No. 92.]

1974.

Notice of motion or summons for payment of money into Court (with interest) (*o*).

Formal parts: see ante No. 1571 *or* No. 881.

[*If the payment in is voluntary* (*p*), *say:*] on the part of the defendant C. D. [*or as may be*], that he may be at liberty on or before the —— day of ——, 187— (*s*)

Amended Ords. 1874, rule 4; note (*l*) to No. 1971 *ante*. As to the securities which may be deposited in Court, see *post*, note (*a*) to No. 1975; and as to the mode in which the deposit is made, see *post*, note (*f*) to No. 1976.

(*o*) As to the mode in which an application for payment into Court is made, and the evidence by which such an application should be supported, see Dan. Pr. 1628—1631; the application is usually by summons; *Ibid.* For orders in like case, see Seton, ed. 4, 73. When an order for payment in has been obtained, the order should be taken to the Chancery Pay Office, and a direction bespoken to the Bank to receive the money and place it to the credit of the Chancery Pay Office Account; the money and the direction should then be taken to the Bank, who will give a receipt for the money, and will return the direction to the Chancery Pay Office with a certificate thereon that the money has been received and placed to the credit of the Chancery Pay Office Account; upon receipt of this direction and certificate, the Chancery Paymaster will file in the Report Office his certificate of the payment, stating therein the title of the cause or matter to which the money has been placed, and an office copy of this last mentioned certificate will be received as evidence of the payment into Court therein mentioned; Chancery Funds Cons. Rules, 1874, rules 28, 30.

(*p*) As to voluntary payment in without an order, see Chancery Funds Cons. Rules, 1874, rule 25; *ante* No. 1971, and note (*l*) thereto.

(*s*) See note (*c*) to No. 1260 *ante*. A person directed by an order to make a payment or transfer into or deposit in Court, may make the same without further order, notwithstanding the order may not have been served, or the time thereby limited for making the payment, transfer, or deposit may have expired; and if any further sum of money has by reason of such default become payable by such person for interest or in respect of dividends, he may pay such further sum into Court upon a request under rule 25 (see note (*l*) to No. 1971 *ante*); but such subsequent payment, transfer, or deposit will not affect or prejudice any

[*If the application is made hostilely against a party* (*q*), *say:*] on the part of the plaintiff [*or as may be*], that the defendant C. D. [*or as may be* (*r*)] may be ordered, on or before the —— day of ——, 187—, or subsequently within (seven) days after service of this order upon him (*s*)

[*In either case, proceed thus:*] to pay into Court to the credit of this cause, B. *v.* D., 1876, B. 100 (*t*).

[*If to a separate account, add:*] to an account to be intituled "The account of, &c." (*t*).

[*If the sum paid in is placed to a separate account, and is subject to legacy or succession duty, add:*] subject to legacy [*Or*, succession] duty (*u*),

the sum of £—— due from him as [*State how*].

[*If interest is to be paid* (*w*), *add:*] together with interest

liability, process, or other consequences which such person may have become subject to by reason of his default in making the same within the time limited; Chancery Funds Cons. Rules, 1874, rule 27. Such person must forthwith give notice of such payment, transfer, or deposit to the solicitors of the persons upon whose application the order directing the payment, transfer, or deposit was made, or to such persons, if they have no solicitors; or if the order was made on the application of the person making such payment, transfer, or deposit, then to the solicitors of the other parties appearing on the application; Chancery Funds Amended Orders, 1874, rule 4. For form of notice, see *post*, No. 1993. The time for making a payment, transfer, or deposit may, if necessary, be extended by a supplemental order, referring to the former order; such supplemental order may be made on summons at Chambers; Chancery Funds Cons. Rules, 1874, rule 27.

(*q*) As to the cases in which a payment in will be ordered hostilely, see Dan. Pr. 1619—1628; *Gunn* v. *Bolckow, Vaughan & Co.*, L. R. 10 Ch. 491; *London Syndicate Limited* v. *Lord*, 26 W. R. 427; and upon whose application, see Dan. Pr. 1628, 1629. As to the mode of enforcing the order, see R. S. C. Ord. XLII. 2, 5; *Ibid.* Ord. XLVII; note (*a*) at p. 687 *ante*; and see note (*h*) to No. 1968 *ante*.

(*r*) Persons who are directed by an order to pay or transfer into, or deposit in Court, any money or securities must be described in the order by name and not merely as plaintiffs or petitioners or the like; Chancery Funds Cons. Rules, 1874, rule 12.

(*s*) See note (*s*) at p. 1050 *ante*.

(*t*) Every order directing money or securities to be brought into Court must state, in the body of the order, the title of the cause or matter, and the separate account, if any, to the credit of which such money or securities are to be placed; Chancery Funds Cons. Rules, 1874, rule 7. The length of the title of an account may not exceed thirty-six words, unless sufficient reason be assigned for extending the title; but in the case of a separate account in a cause or matter, the title of the cause or matter in which such separate account is raised is not to be reckoned in the thirty-six words; Chancery Funds Cons. Rules, 1874, rule 94.

(*u*) See Chancery Funds Cons. Rules, 1874, rule 14.

(*w*) Dividends or interest directed by order to be paid into Court, the amount of which cannot be ascertained at the date of the order, may be ascertained by affidavit or by statutory declaration under the 5 & 6 W. IV. c. 62;

thereon, at the rate of £5 per cent. per annum, from the —— day of ——, 187—, to the day for payment, after deducting income-tax (such interest to be ascertained by affidavit or by a statutory declaration).

1975.
Notice of motion or summons for transfer of stock and payment of dividends into Court (*a*).

[*Proceed as in* No. 1974 *ante, down to* upon him, *and continue thus :*] to transfer £1,000 Consolidated £3 per cent. annuities [*or as may be*] standing in his name in the books of the bank into Court to the credit of this cause. B. *v.* D., 1876, B. 100 (*b*).

[*If to a separate account, add :*] to an account to be intituled "The account of, *&c.*" (*b*).

Chancery Funds Cons. Rules, 1874, rules 8, 10, 86 ; in computing interest, income tax is to be deducted, unless the order otherwise directs ; and the affidavit or declaration must state that income tax, if any, has been deducted : *Ibid.*, rule 10. For forms of affidavit and declaration, see *post* Nos. 1986 and 1987.

(*a*) The securities which may be directly transferred into or deposited in Court, are the following : (1.) Government securities ; (2.) Securities of any foreign state ; (3.) Securities of any part of her Majesty's dominions out of the United Kingdom ; (4.) Securities of any body corporate or company in the United Kingdom, or standing in books kept by any body corporate, company, or person in the United Kingdom ; Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), ss. 3, 6. Other securities will not be received into Court except in a box ; Seton, ed. 4, 84. As to a voluntary transfer into Court without an order, see Chancery Funds Cons. Rules, 1874, rule 25 ; *ante* No. 1972, and note (*m*) thereto. As to the cases in which a party will be ordered to make a transfer into Court, see Dan. Pr. 1619—1628 ; *ante* note (*q*) to No. 1974 ; upon whose application ; Dan. Pr. 1628, 1629 ; the mode in which the application should be made, and the evidence by which it should be supported ; Dan. Pr. 1628—1631 ; the application is usually by summons ; *Ibid.* For orders in like case, see Seton, ed. 4, 74. When an order has been obtained for a transfer into Court, it should be taken to the Chancery Pay Office, and a direction bespoken for the transfer to be made to the account of the Paymaster-General for the time being on account of the Court ; the securities should then be transferred accordingly, and the bank, body corporate, or company in whose books the transfer is made or registered, will return the direction to the Chancery Pay Office with a certificate thereon that the securities therein specified have been transferred to the said account ; thereupon the Chancery Paymaster will file in the Report Office a certificate of such transfer, stating therein the title of the cause or matter to which such securities have been placed ; and an office copy of such last-mentioned certificate will be received as evidence of the transfer into Court therein mentioned ; Chancery Funds Cons. Rules, rules 29, 30.

(*b*) See Chancery Funds Cons. Rules, 1874, rules 7, 94 ; note (*t*) to No. 1974 *ante*.

[*If the stock is placed to a separate account, and is subject to legacy or succession duty, add:*] subject to legacy [*Or*, succession] duty (*c*).

And that the said defendant C. D. may be at liberty [*Or*, may be ordered] to receive any dividends (*d*) now due on the said annuities, and within (seven) days after such receipt or subsequently within (seven) days after service of this order upon him, to pay such dividends into Court to the same credit.

[*If an investment of the dividends* (*d d*) *is desired* (*e*), *add:*] And that such dividends, when so paid in, may be invested in like annuities, and that the dividends to accrue on the annuities so to be transferred into Court and purchased may be from time to time invested in like annuities.

1976. Notice of motion or summons for deposit in Court of Exchequer bills (*f*).

[*Proceed as in* No. 1974 *ante, down to*, upon him, *and continue thus:*] to deposit in Court to the credit of [*&c., as in* No. 1974 *ante*] the following Exchequer Bills, amounting in the whole to £——, that is to say, No. —— for £——, dated ——, No. —— for £——, dated ——, and, *&c.*, or any other bills for which the same may be exchanged.

(*c*) See Chancery Funds Cons. Rules, 1874, rule 14.

(*d*) See Chancery Funds Cons. Rules, rules 8, 10, 86; note (*w*) to No. 1974 *ante*. For forms of affidavit and statutory declaration verifying amount of dividends, see *post* Nos. 1986, 1987.

(*d d*) Dividends received in respect of securities standing to the Chancery Pay Office Account will be placed to the credit to which the securities whereon such dividends accrued were standing at the time of the closing of the transfer books of such securities previously to the dividends becoming due; Chancery Funds Cons. Rules, 1874, rule 35.

(*e*) As to investment, see *post* No. 1998 and notes thereto.

(*f*) As to the securities which may be deposited in Court, see note (*a*) to No. 1975 *ante*. As to a voluntary deposit in Court without an order, see Chancery Funds Cons. Rules, 1874, rule 25; *ante* No. 1973, and note (*u*) thereto. As to the cases in which a party will be ordered to make a deposit in Court, see Dan. Pr. 1619—1628; *ante* note (*q*) to No. 1974; upon whose application; Dan. Pr. 1628, 1629; the mode in which the application should be made, and the evidence by which it should be supported; Dan. Pr. 1628—1631; the application is usually by summons; *Ibid.* For order in like case, see Seton, ed. 4, 74. When an order for the deposit of securities in Court has been obtained, the order should be taken to the Chancery Paymaster, who will issue a direction to the bank to receive and place the same to the Chancery Pay Office Account; the direction and securities should then be taken to the Bank, who will give a receipt for the securities, and will return the direction to the Chancery Pay Office with a certificate thereon that the securities have been

1977.
Another form thereof (*g*).

[*Proceed as in* No. 1974 *ante, down to* upon him, *and continue thus:*] to deposit in Court to the credit of [*&c.: as in* No. 1974 *ante*] the Exchequer Bills specified in the schedule hereto, and amounting together to £—— (*h*), or any other bills for which the same may be exchanged.

Schedule.

Dates.	Numbers.	Amounts.
1 Jan., 1877. *&c.* *&c.*	No. 1000. *&c.* *&c.*	£200 *&c.* *&c.*

1978.
Notice of motion or summons for deposit in Court of securities passing by delivery, other than Exchequer bills (*k*).

[*Proceed as in* No. 1974 *ante, down to* upon him, *and continue thus:*] to deposit in Court to the credit of [*&c. as in* No. 1974 *ante*] the [*Here describe the securities to be deposited by reference to a schedule, specifying in the body of the application the total amount of such securities* (*l*), *as thus:*] 20 Chilian 5 per cent. 1871 bonds,

received and placed to the credit of the Chancery Pay Office Account; the Chancery Paymaster will then file in the Report Office a certificate of such deposit, stating therein the title of the cause or matter to which the securities have been placed; and an office copy of such last-mentioned certificate will be received as evidence of the deposit therein mentioned; Chancery Funds Cons. Rules, 1874, rules 28, 30. When the Exchequer bills deposited in Court, or any bills for which the same may be exchanged, or any bills which may be purchased with money received in payment of such bills, become due, the bank will exchange the same for new bills, if new bills are issued, or otherwise will receive the principal money and interest thereon, which the Chancery Paymaster will, without any further request, invest in Exchequer bills, and the bills so received by way of exchange or purchase will be placed to the credit to which the bills exchanged or paid off, stood; Chancery Funds Cons. Rules, 1874, rules 62, 63; and see *Ibid.*, rule 35. As to the interest to be received, in respect of the bills, see Chancery Funds Cons. Rules, 1874, rule 35; note (*dd*) to No. 1975 *ante*.

(*g*) See note (*f*) to No. 1976 *ante*.

(*h*) Directions in orders to be acted on by the Chancery Paymaster are to be expressed in or by reference to a schedule or tabular statement subjoined to the order, but the total amount of the securities or money dealt with in such schedule must be stated in words at length in the mandatory part of the order; Chancery Funds Cons. Rules, 1874, rule 9.

(*k*) See note (*f*) to No. 1976 *ante*. As to the securities which may be deposited in Court, see note (*a*) to No. 1975 *ante*. For order in like case, see Seton, ed. 4, 75.

(*l*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*) to No. 1977 *ante*.

amounting together to £——, and the 14 Brazilian, *&c.*, amounting together to £——, with the coupons thereto attached and respectively specified in the schedule hereto. And that any principal money to be received in respect of any such securities (*m*) may be invested (*n*) in Consolidated £3 per cent. annuities. And that the dividends (*o*) to accrue on such securities may be from time to time invested (*n*) in like annuities.

Schedule.

Description of Securities.	Dates.	Numbers.	Amounts.	Coupons attached.
Chilian bonds.	8 July, 1875	1,000—1,019	£100 each.	For dividends payable half-yearly from the —— of ——, 1875, to the —— of ——, 1900

1979. Notice of motion or summons for the deposit in Court and transfer of securities passing by deed (*p*).

[*Proceed as in* No. 1974 *ante*, *down to* upon him, *and continue thus:*] to deposit in Court to the credit of [*&c.: as in* No. 1974 *ante*] the [*Here describe the securities to be deposited by reference to a schedule, specifying in the body of the application the total amount*

(*m*) Where any securities deposited at the bank to the Chancery Pay Office Account are in course of payment, the principal money will be received and placed to the credit to which such securities were standing at the time of the receipt thereof; Chancery Funds Cons. Rules, 1874, rules 35, 63.

(*n*) As to investment, see *post* No. 1998 and notes thereto.

(*o*) See Chancery Funds Cons. Rules, 1874, rule 35; note (*dd*) to No. 1975 *ante*.

(*p*) As to the securities which may be transferred into and deposited in Court, see note (*a*) to No. 1975 *ante*. As to a voluntary transfer into and deposit in Court without an order, see Chancery Funds Cons. Rules, 1874, rule 25; *ante* Nos. 1972 and 1973, and notes thereto. As to the cases in which a party will be ordered to make a transfer into and deposit in Court, see Dan. Pr. 1619—1628; *ante* note (*q*) to No. 1974; upon whose application; Dan. Pr. 1628, 1629; the mode in which the application should be made, and the evidence by which it should be supported; Dan. Pr. 1628—1631; the application is usually by summons; *Ibid.* For order in like case, see Seton, ed. 4, 75. As to the mode of making the deposit, see Chancery Funds Cons. Rules, 1874, rule 28; and note (*f*) to No. 1976 *ante*; as to the mode of making the transfer, see Chancery Funds Cons. Rules, 1874, rule 29; and note (*a*) to No. 1975 *ante*. As to the evidence of the transfer and deposit having been made, see Chancery Funds Cons. Rules, 1874, rule 30; note (*a*) to No. 1975, and note (*f*) to No. 1976 *ante*.

of such securities (*q*), *as thus:*] two bonds of the A. Gas Company, amounting together to £500, the four bonds of, *&c.*, amounting together to £1,000, and the, *&c.*, respectively specified in the schedule hereto, and within the same period to execute and procure to be registered a transfer of such securities to the Chancery Pay Office account. And that any principal money [*Conclude as in* No. 1978 *ante* (*q q*)].

Schedule.

Description of Securities.	Dates.	Numbers.	Amounts.	Coupons attached.

1980. Notice of motion or summons for the deposit in Court of such effects as must be placed in a box (*r*).

[*Proceed as in* No. 1974 *ante, down to* upon him, *and continue thus:*] to place in a box, in the presence of the solicitors for the plaintiff, the certificates and other documents of title of the 200 shares in the —— Society, in the statement of claim mentioned [*Or*, the several articles of plate; *Or*, the several articles of jewellery; *or as may be*], specified in the schedule hereto. And that such box may be indorsed "In the High Court of Justice, Chancery Division, B. *v.* D., 1876. B. 100. The account of, &c. Securities" [*Or*, "Plate"; *Or*, "Jewellery"]. And that the said defendant C. D. may be ordered within the time aforesaid to

(*q*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*), to No. 1977 *ante*.

(*q q*) See notes (*m*), (*n*), (*o*), to No. 1978 *ante*.

(*r*) As to what securities may be deposited directly in Court, and what must be placed in a box, see note (*a*) to No. 1975 *ante*. Any securities passing by delivery may, if desired, be placed in a box and then deposited in Court, instead of being directly deposited in Court: Seton, ed. 4, 84. As to the cases in which a party will be ordered to make a deposit in Court, see Dan. Pr. 1619—1628; *ante* note (*q*) to No. 1974; upon whose application; Dan. Pr. 1628, 1629; the mode in which the application should be made and the evidence by which it should be supported; Dan. Pr. 1628—1631; the application is usually by summons; *Ibid.* For order in like case, see Seton, ed. 4, 75. The deposit is made in the manner pointed out in Chancery Funds Cons. Rules, 1874, rules 28, 30; and *supra*, note (*f*) to No. 1976 *ante*. The Clerks of Records and Writs are not to receive into their custody effects of the suitors consisting of jewels or plate, or other articles of a like nature, or negotiable securities; Chancery Funds Amended Orders, 1874, rule 16.

deposit such box in Court to the credit of [*&c.; as in* No. 1974 *ante*].

[*If required, add:*] And that such box may be ordered to be delivered out within fifteen days after the 1st of January, 187—, and the 1st July, 187— [*or as may be* (*t*)], and after the same days in each succeeding year to the defendant C. D., for the purpose of receiving the dividends (*u*) on such securities. And that the said securities may be ordered to be replaced in such box in the presence of the solicitors for the plaintiff. And that the defendant C. D. may be ordered, on or before the 20th of January, 187—, and the 20th of July, 187— [*or as may be*], and the same days in each succeeding year to re-deposit such box in Court to the same credit. And that the defendant C. D. may be ordered to receive such dividends, and on or before the 20th of January, 187—, and the 20th of July, 187—, and the same days in each succeeding year to pay such dividends into Court to the same credit.

Schedule.

Description of Securities.	Dates.	Numbers.	Amounts.	Coupons attached.

1981. Notice of motion or summons to deposit and transfer in and into Court securities and effects of various kinds (*v*).

[*Proceed as in* No. 1974 *ante, to* upon him, *and continue thus:*] to deposit in Court to the credit of this cause [*&c.; as in* No. 1974 *ante*], the several securities specified in Part I. of the schedule hereto for the several sums therein mentioned, amounting

(*t*) The days in each year on which the dividends on the securities are payable.

(*u*) It is not necessary to direct the amount of the dividends to be verified by affidavit or statutory declaration; Chancery Funds Cons. Rules, 1874, rules 8, 86.

(*v*) See note (*a*) to No. 1975; note (*f*) to No. 1976; note (*p*) to No. 1979; and note (*r*) to No. 1980 *ante*. For order in like case, see *Povah* v. *Walker*, L. R. 15 Eq. 316; *Re Banks, Wright* v. *Banks*, V.-C. M. at Chambers, 5 Dec. 1877, Reg. Lib. B. 3733. As to the mode of performing the deposits and transfers, see Chancery Funds Cons. Rules, 1874, rules 28, 29, 30; note (*a*) to No. 1975, and note (*f*) to No. 1976 *ante*.

together to the sum of £—— (*w*). And also within the time aforesaid to deposit in Court to the like credit the several securities specified in Part II. of the schedule hereto, for the several sums therein mentioned, amounting together to the sum of £—— (*w*), and to execute and procure to be registered proper transfers of such securities to the Chancery Pay Office Account. And also within the time aforesaid to transfer into Court to the like credit the securities specified in Part III. of the schedule hereto, for the several sums therein mentioned, amounting together to the sum of £—— (*w*). And that any principal money to be received (*x*) in respect of any of such securities so to be deposited in or transferred into Court as aforesaid, may be invested (*y*) in Consolidated £3 per cent. annuities. And that the dividends (*z*) to accrue on any such securities so to be deposited or transferred as aforesaid, and on any Consolidated £3 per cent. annuities so to be purchased as aforesaid, and all accumulations thereon may be ordered to be invested (*y*) in like annuities. And that the said C. D. may be ordered within the time aforesaid to place, in the presence of the solicitors for the plaintiff, in a box to be indorsed "In the High Court of Justice, Chancery Division. B. *v.* D. 1876. B. 100. The account of, &c. Securities and Effects," the certificates and other documents of title to the securities (*a*) specified in Part IV. of the schedule hereto, for the several sums therein mentioned, amounting together to the sum of £—— (*w*), and also the effects specified in Part V. of the schedule hereto, and to deposit such box in Court to the credit of [*&c.; as in the former part of the application*].

[*If it is required that dividends should be received on securities placed in a box and deposited, add the directions at the end of* No. 1980 *ante.*]

(*w*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*) to No. 1977 *ante.*

(*x*) See Chancery Funds Cons. Rules, 1874, rules 35, 63; note (*m*) to No. 1978 *ante.*

(*y*) As to investment, see *post* No. 1998 and notes thereto.

(*z*) See Chancery Funds Cons. Rules, 1874, rule 35; note (*dd*) to No. 1975 *ante.*

(*a*) As to what securities must be, and what securities may be, placed in a box previously to being deposited in Court, see note (*a*) to No. 1975 *ante;* and note (*r*) to No. 1980 *ante.*

SCHEDULE.

PART I.

Securities passing by Delivery.

Number and description of each of the Securities.	Date.	Numbers.	Amount.	Coupons.
20 Chilian 5 per cent. 1871 Bonds.	8 July, 1875. ..	1001-1020	£100 each	For dividends payable half-yearly on the —— day of ——, and the —— day of ——, from the —— day of ——, 1875, to the —— day of ——, 1890.

PART II.

Securities passing by Registered Deed.

Number and description of each of the Securities.	Date.	Numbers.	Amount.	Coupons.

PART III.

Securities transferable in Books.

Description of the Securities.	Amounts.

PART IV.

Securities ordered to be placed in a Box.

Number and description of each of the Securities.	Date.	Numbers.	Amount.	Coupons.

PART V.

Effects ordered to be placed in a Box.

[*Describe them.*]

1982

Summons to deposit in Court, under the Court of Chancery (Funds) Act, 1872, securities previously deposited in a box (*a*).

Formal parts : see ante No. 881.

on the part of the plaintiff J. A. [*or as may be*], that the box indorsed [*State the indorsement of the box*], and deposited in Court to the credit of this cause, "A. *v.* B., 1876, A. 100. The account of, &c.," may be delivered out to the said —— for the purpose of depositing in Court the securities therein contained, and that the said —— may be ordered on or before the ——, or subsequently within —— days after service on him of the order to be made hereupon (*aa*), to deposit in Court to the like credit, the [*Continue as in* No. 1976, *or* No. 1977, *or* No. 1978, *or* No. 1979 *ante, according to the nature of the securities*].

(*a*) Where, under the practice previously to the Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), a box containing securities has been deposited in Court, and it is desired that these securities should be brought into Court under the Chancery Funds Act, 1872, an application should be made for an order for the delivery out of the box, and the deposit of the securities in Court, pursuant to the provisions of the Act.

(*aa*) See note (*c*) to No. 1260 *ante*, and note (*s*) to No. 1974 *ante*.

1983. Affidavit in support of application for order for payment in, where founded on an admission (*b*).

Formal parts : see ante No. 693.

1. I have cast up the several items set forth in the first and second schedules [*or as may be*] to the affidavit of the defendant C. D., filed in this cause on the —— day of ——, 187—.

2. The items in the said first schedule [*or as may be*] amount to the sum of £1,000, and no more ; and the items in the said second schedule [*or as may be*] amount to the sum of £600, and no more.

3. The said sum of £600 being deducted from the said sum of £1,000, there remains a balance or sum of £400 : which sum of £400 appears by the said affidavit and schedules to be due from the said defendant C. D. to the estate of G. H., the testator in the pleadings in this cause named [*or as may be*].

1984. The like, where founded on an account left in chambers (*c*).

Formal parts : see ante No. 693.

1. I have cast up the several items set forth in the account marked A., left in the Chambers of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——] by the defendant C. D., and verified by his affidavit filed in this cause on the —— day of ——, 187—.

2. The items on the receipt side of the said account amount to the sum of £1,000, and no more : and the items on the payment side of the said account amount to the sum of £600, and no more.

3. The said sum of £600 being deducted from the said sum of £1,000, there remains a balance or sum of £400 : which sum of £400 appears by the said affidavit and account to be due from the said defendant C. D. to the estate of G. H., the testator in the pleadings in this cause named [*or as may be*].

1985. Summons to extend time for making payment, transfer or deposit into or in Court (*d*).

Formal parts : see ante No. 881.

on the part of the defendant C. D. [*or as may be*], that the time limited by the order dated the —— day of ——, 187—, for the applicant to pay [*or as may be ; as in order*] the £—— cash [*or as may be ; as in order*], in the said order mentioned, into [*Or*, in] Court to the credit of [*&c. ; as in order*], may be extended to the —— day of ——, 187—. And that the costs of this application may be costs in the cause (*e*).

(*b*) See Dan. Pr. 1630.

(*c*) See Dan. Pr. 1631.

(*d*) See Chancery Funds Cons. Rules, 1874, rule 27 ; note (*s*) to No. 1974 *ante*. For order in like case, see Seton, ed. 4, 78.

(*e*) See R. S. C. (Costs), Sched. "Special allowances and general provisions," rule 22 ; note (*d*) to No. 402 *ante*.

1986.
Affidavit of amount of interest or dividends to be paid into Court (*f*).

Formal parts : see ante No. 693.

1. The interest on the sum of £—— in the order made in this cause, and dated the —— day of ——, 187—, mentioned, at the rate of £5 per cent. per annum from the —— day of ——, 187—, to the —— day of ——, 187—, the day for payment in of the said sum pursuant to the said order, after deducting the sum of —— for income tax (*g*);

Or, The dividends on the sum of £1,000 Consolidated £3 per cent. annuities [*or as may be ; as in order*] in the order made in this cause and dated the —— day of ——, 187—, mentioned, due at the date of the said order ;

and which, pursuant to the said order is [*Or*, are] to be paid into Court to the credit of [*&c. : as in order*], amounts [*Or*, amount] to the sum of £——, and no more.

1987.
Statutory declaration in like case (*f*).

In the High Court of Justice,
Chancery Division.
[*Title of cause or matter, and reference to record.*]

I, A. B., of [*residence and description or addition*], do solemnly and sincerely declare that [*Set forth the matters declared to ; as in* No. 1986 *ante*]. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty William the Fourth, intituled "An Act to repeal an Act of the present session of Parliament, intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits,' and to make other provisions for the abolition of unnecessary oaths."

1988.
Declarat thereto.

[*To the declarant :*] Is that your name and handwriting ?

You do solemnly and sincerely declare that the contents of this your declaration are true ?

Declared at [*State where*] this —— day of ——, 187—, } A. B.

before me,
C. D.
[*Add style of office.*]

(*f*) Chancery Funds Cons. Rules, 1874, rules 8, 10, 86 ; note (*w*) to No. 1974 *ante*.

(*g*) Chancery Funds Cons. Rules, 1874, rule 10 ; note (*w*) to No. 1974 *ante*.

1989. Paymaster-General's certificate of payment into Court (*h*).

Chancery.

Chancery Pay Office,
—— day of ——, 187—.

I hereby certify that on the —— day of ——, 187—, —— paid into the Bank of England the sum of £——, to the account of the Paymaster-General for the time being on behalf of the Court of Chancery (*h h*), which money has been placed in the books at this office to the credit of [*Title of the cause, or matter, and separate account, if any*], being money payable into Court to the like credit pursuant to order dated —— (and a —— filed the ——).

1990. Paymaster-General's certificate of transfer into Court (*j*).

Chancery.

Chancery Pay Office,
—— day of ——, 187—.

I hereby certify that on the —— day of ——, 187—, —— transferred to the account of the Paymaster-General for the time being, on behalf of the Court of Chancery (*h h*), the sum of £—— Consolidated £3 per cent. annuities [*or as may be*], which securities have been placed in the books at this Office to the credit of [*Title of the cause, or matter, and separate account, if any*], being securities transferable into Court to the like credit pursuant to order dated ——.

1991. Paymaster-General's certificate of deposit of securities in Court (*k*).

Chancery.

Chancery Pay Office,
—— day of ——, 187—.

I hereby certify that on the —— day of ——, 187—, —— deposited to the account of the Paymaster-General for the time being, on behalf of the Court of Chancery (*h h*), the following [*Here describe the securities deposited; as thus:*] Exchequer Bills, that is to say, No. —, for £——, dated ——, No. —, for £——, dated ——, amounting together to £—— [*or as may be*], which securities have been placed in the books at this Office to the credit of [*Title of the cause, or matter, and separate account, if any*], being securities to be deposited in Court to the like credit pursuant to order dated ——.

(*h*) See Chancery Funds Cons. Rules, 1874, rule 30; note (*o*) to No. 1974 *ante*. For forms of request for certificate, and certificate, of non-payment in, see *ante* Nos. 1968 and 1969.

(*h h*) *Sic* in official forms.

(*j*) See Chancery Funds Cons. Rules, 1874, rule 30; note (*a*) to No. 1975 *ante*. For forms of request for certificate, and certificate, of non-transfer into Court, see *ante* Nos. 1968 and 1969.

(*k*) See Chancery Funds Cons. Rules, 1874, rule 30; note (*f*) to No. 1976 *ante*. For forms of request for certificate, and certificate, of non-deposit in Court, see *ante* Nos. 1968 and 1969.

1992. Paymaster-General's certificate of deposit in Court of box containing effects (*l*).

Chancery.

Chancery Pay Office,
—— day of ——, 187—.

I hereby certify that on the —— day of ——, 187—, —— deposited at the Bank of England to the account of the Paymaster-General for the time being on behalf of the Court of Chancery (*ll*), a box indorsed [*State the indorsement on the box; see ante* No. 1980], which box has been placed in the books at this Office to the credit of [*Title of the cause, or matter, and separate account, if any*], being a box to be deposited in Court to the like credit pursuant to an order dated —— day of ——.

1993. Notice of payment, transfer or deposit into or in Court (*m*).

Formal parts: see ante No. 21.

Take notice that the defendant A. B. [*Or*, A. B., of ——] has paid into [*Or*, transferred into; *Or*, deposited in] Court to the credit of [*State the title of the cause or matter, and separate account, if any*], the sum of £—— cash [*Or, describe the securities transferred or deposited*], and that such sum [*Or, describe the securities*] represents [*State what the money or securities represent, as thus:*] the balance admitted by his affidavit filed the —— day of ——, 187—, to be in his hands on account of the personal estate of the testator in this cause, and that such payment [*Or*, transfer; *Or*, deposit] has been made [*State for what purpose it was made, as thus:*] for the purpose of discharging himself thereof [*Or*, under the order dated the —— day of ——, 187—].

(*l*) See Chancery Funds Cons. Rules, 1874, rule 30; note (*f*) to No. 1976 *ante*. For forms of request for certificate, and certificate, of non-deposit in Court, see *ante* Nos. 1968 and 1969.

(*ll*) *Sic* in official forms.

(*m*) This notice is necessary in two cases: (1) where a person has made a payment, transfer, or deposit into or in Court, upon request without an order, under the 25th rule of the Chancery Funds Cons. Rules, 1874; Chancery Funds Amended Orders, 1874, rule 4; note (*l*) to No. 1971 *ante*; and in this case the notice must state what the money or securities so paid, transferred, or deposited, represent, and for what purpose the payment, transfer, or deposit has been made; *Ibid.*; (2) where a person directed by order to make a payment, transfer, or deposit into or in Court, makes such payment, transfer, or deposit under the 27th rule of the Chancery Funds Cons. Rules, 1874, before the order is served, or after the expiration of the time thereby limited for making the payment, transfer, or deposit; Chancery Funds Amended Orders, 1874, rule 4; note (*s*) to No. 1974 *ante*. As to the persons to whom the notice is to be given, see Chancery Funds Amended Orders, 1874, rule 4; note (*l*) to No. 1971; and note (*s*) to No. 1974 *ante*. The notice may be sent by post; *Ibid.*

Section III.—Placing on Deposit and Investment of Money in Court.

1994.
Request to place money on deposit (*a*).

Chancery.

To the Paymaster-General.

I request that the sum of £—— standing to the credit of [*State the title of the account to which the money stands*] may be **placed on deposit.**

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party; as in* No. 92 *ante.*]

1995.
Request not to place money on deposit (*b*).

Chancery.

To the Paymaster-General.

I request that the sum of £—— paid into Court to the credit of [*State the title of the account to which the money stands*] on the —— day of —— [*State when the money was paid into Court*]

(*a*) As a general rule, money paid into Court will be placed upon deposit without any request for that purpose; Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 14; Chancery Funds Cons. Rules, 1874, rule 68; but a request is necessary in the following cases: (1.) Where the money was paid into Court before the 7th Jan. 1873; (2.) Where the money has arisen from the sale or payment off of securities in Court; (3.) Where the money is dividends which have accrued on securities in Court; (4.) Where the money is brought over from the credit of some other cause or matter; Chancery Funds Cons. Rules, 1874, rule 68. Money directed to be dealt with otherwise than by being placed upon deposit, money paid in to the Appeal Deposit Account, and money of less amount than £10, will not be placed upon deposit; Chancery Funds Cons. Rules, 1874, rules 69, 72, 73; and a less sum of money than £10 will not be allowed to remain upon deposit; *Ibid.*, rule 73. As to the time at which money will be placed upon deposit, see Chancery Funds Cons. Rules, rule 70. Money placed on deposit bears interest at the rate of two per cent. per annum, together with any income tax chargeable thereon; Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 14. As to the mode in which interest is computed, and the time at which it will be credited, and as to the placing of interest on deposit, see Chancery Funds Cons. Rules, 1874, rules 76—80. When by an order, money on deposit is dealt with, the money, or so much thereof as may be sufficient to meet the requirements of the order, must be withdrawn from deposit; *Ibid.*, rule 74; as to the mode of withdrawal, see *Ibid.*, rules 74, 75; note (*a*) to No. 2033 *post*; and for form of request to withdraw, see *post* No. 2054. As to the request, see Chancery Funds Cons. Rules, 1874, rule 93; note (*b*) to No. 1962 *ante.*

(*b*) If a request in writing by a solicitor acting on behalf of a person claiming to be entitled to or interested in money in Court, that such money may not be placed on deposit is left at the Chancery Pay Office, such money will not be placed on deposit; Chancery Funds Cons. Rules, rules 67, 69. As to the request, see *Ibid.*, rule 93; note (*b*) to No. 1962 *ante.*

may **not** be placed on deposit, it being [*State the reason for the request*].

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party; as in* No. 92 *ante.*]

1996.

Withdrawal of request not to place money on deposit, and request to place same on deposit (*c*).

Chancery.

To the Paymaster-General.

I withdraw my request that the sum of £—— paid into Court to the credit of [*State the title of the account to which the money stands*], on the —— day of ——, may not be placed on deposit, and request that the same may be **placed on deposit.**

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party; as in* No. 92 *ante.*]

1997.

Request to discontinue placing on deposit, interest or dividends (*cc*).

Chancery.

To the Paymaster-General.

As the solicitor acting on behalf of [*Name the party or person on whose behalf the request is made*], who claims to be entitled to or interested in the sum of £——, money on deposit [*Or*, in the sum of £1,000 Consolidated £3 per cent. annuities; *or as may be*] in Court to the credit of [*State the title of the cause or matter and the account, if any, to which the money or securities is, or are, standing*], I request that the interest [*Or*, dividends] accruing on such money on deposit [*Or*, on such securities] may not be placed on deposit.

Dated —— day of ——, 187—.

[*Name and address of solicitor, as in* No. 92 *ante.*]

1998.

Notice of motion or summons for the investment in stock, of cash or money on deposit (*d*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of [*State whom*], that the £—— cash [*Or*, money on

(*c*) A person making the request referred to in the Chancery Funds Cons. Rules, 1874, rule 69 (note (*b*) to No. 1995 *ante*), may at any time withdraw the same, and by a like request in writing require the money to be placed on deposit; Chancery Funds Cons. Rules, 1874, rule 69. As to the request, see *Ibid.*, rule 93; note (*b*) to No. 1962 *ante.*

(*cc*) Upon a request in writing by a solicitor acting on behalf of a person claiming to be entitled to or interested in money or securities in Court, that the dividends or interest accruing on any specified securities, or on any specified sum of money on deposit, may not be placed on deposit or invested, being left at the Chancery Pay Office, the Chancery Paymaster will be at liberty to cease to place on deposit or invest any more dividends or interest accruing on such securities or money on deposit until he has had notice that the Court has made some order in that behalf; Chancery Funds Cons. Rules, 1874, rule 67. As to the request, see *Ibid.*, rule 93; note (*b*) to No. 1962 *ante.*

(*d*) Except in the case where money is paid into Court under the Legacy

deposit (*e*)] in Court to the credit of this cause [*Title of cause, or matter, and account* (*f*)]

[*Where*

Duty Act (36 Geo. III. c. 52, s. 32); Chancery Funds Cons. Rules, 1874, rule 65; or under the Trustee Relief Act (10 & 11 Vict. c. 96); *Ibid.*, rule 66; money in Court will not be invested in securities without an order; Chancery Funds Cons. Rules, 1874, rule 36. Usually when an order for payment in is obtained, a direction is, at the instance of some person interested in the money, inserted in the order for the investment of the money when paid in; and for the investment and accumulation of the dividends where these are not otherwise disposed of. But where the money is paid in without an order, or the order for payment in does not contain a direction for investment, and the case does not come within the exceptions above mentioned, an order for investment may be obtained on motion or by summons at Chambers; Dan. Pr. 1639, 1640. For forms of petition for the investment of a fund in Court, see *post* Nos. 2198, 2205. The notice of motion, or summons, must generally be served upon all other parties to the proceeding who are interested in the fund; *Ibid.* As to the securities in which cash under the control of the Court may be invested, see Dan. Pr. 1641, 1642. For forms of order to invest, see Seton, ed. 4, 76, 77. Where an order for the investment of a fund in Court has been made, a request in writing to give effect thereto must be left at the Chancery Pay Office; Chancery Funds Cons. Rules, 1874, rule 37; for form of request, see *post* No. 2001; the Chancery Paymaster will thereupon issue a cheque or direction for the payment of the money to the broker conditionally upon his causing the specified securities to be transferred or deposited to the account of the Paymaster-General for the time being; Chancery Funds Cons. Rules, 1874, rule 60; when the transfer or deposit has been made, the bank, body corporate, or company, in whose books or with whom the transfer or deposit has been made or registered, must issue a certificate thereof; which certificate is sufficient evidence that the transfer or deposit has been actually made; and the securities so transferred or deposited will be placed in the books at the Chancery Pay Office to the same credit as that to which the money invested was standing at the time of the investment, unless the order otherwise directs; *Ibid.*, rule 60. When the money to be invested is on deposit, it must first be withdrawn from deposit; Chancery Funds Cons. Rules, 1874, rule 74 as to the mode of withdrawal, see *Ibid.*, rules 74, 75; note (*u*) to No. 2033 *post*; and for form of request to withdraw, see *post* No. 2054. Where money ordered to be invested is, after the date of the order, placed on deposit, the money when withdrawn and any interest credited in respect thereof, will be applied in the same manner as the money would have been applied had it not been placed on deposit; Chancery Funds Cons. Rules, 1874, rule 50; and interest accruing in respect of such money, will be applied in the same manner as the dividends arising from the investment are directed to be applied; *Ibid.*, rule 51. If the securities upon which the money is invested are paid off, the principal money will be received by the bank and placed to the credit to which the securities were standing at the time of the receipt of such principal money; Chancery Funds Cons. Rules, 1874, rules 35, 63; see note (*m*) to No. 1978 *ante*. As to Exchequer bills in particular, see Chancery Funds Cons. Rules, 1874, rules 62, 63; note (*f*) to No. 1976 *ante*.

(*e*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *post*.

(*f*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *post*.

[*Where the application is to invest money on deposit, add:*] and any interest to be credited in respect of the said money on deposit (*g*)

may

[*If the sum to be invested is less than* £40 (*h*), *add:*] notwithstanding the smallness of the amount,

be invested in Consolidated £3 per annuities [*or as may be* (*hh*)].

[*If it is desired to have the dividends accumulated, add:*] And that the dividends as they accrue on such annuities may be from time to time invested in like annuities (*j*).

1999. The like, for investment in Exchequer bills (*k*).

[*Same as* No. 1998 *ante, substituting* "in Exchequer Bills" *for* "in Consolidated £3 per centum annuities," *and* "securities" *for* "annuities."

(*g*) See Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 14; Chancery Funds Cons. Rules, 1874, rules 76—89; note (*a*) to No. 1994 *ante*. As to the application of interest on money placed on deposit after the date of an order for investment, see Chancery Funds Cons. Rules, 1874, rules 50, 51; note (*d*) at p. 1067, *supra*.

(*h*) Except where money is paid in under the Legacy Duty Act (36 Geo. III. c. 52); Chancery Funds Cons. Rules, 1874, rule 65; or under the Trustee Relief Act (10 & 11 Vict. c. 96); *Ibid.*, rule 66; money in Court less than £40 is not to be invested in securities; *Ibid.*, rule 64; and this extends to the investment of dividends accruing on securities in Court directed or requested to be invested; *Ibid.*, rule 64.

(*hh*) The securities in which the investment is to be made must be specified; Chancery Funds Cons. Rules, 1874, rule 60. As to the securities in which cash under the control of the Court may be invested, see Dan. Pr. 1641, 1642.

(*j*) Dividends received will be carried to the same credit as the securities; Chancery Funds Cons. Rules, 1874, rule 35; note (*dd*) to No. 1975 *ante*. When the order directs the investment of dividends from time to time as they accrue, the order should be left at the Chancery Pay Office with a request to give effect to such direction, and future dividends will from time to time be invested without any further request; Chancery Funds Cons. Rules, 1874, rule 61; but if such dividends do not amount to £40 half-yearly, they will, notwithstanding the direction for investment, be placed upon deposit and not invested; *Ibid.*, rules 61, 64. As to the mode in which an investment is effected, see note (*d*) at p. 1067, *supra*. If, instead of accumulating the dividends, it is desired that they should be paid out to the party entitled thereto, one of the forms *post* Nos. 2012—2022, should be substituted for the last clause of No. 1998.

(*k*) See the notes to No. 1998 *ante*.

2000. The like, for investment in railway stock (*l*).

Formal parts : see ante No. 1571 *or* No. 881.

on the part of [*State whom*], that out of the £—— cash [*Or*, money on deposit (*m*)] in Court to the credit of [*Title of cause, or matter, and account* (*n*)], the sum of £——, or so much thereof as may be practicable, may be invested in North Eastern Railway £4 per cent. debenture stock [*or as may be* (*nn*)]. And that the residue (if any) of the said £—— may be (again) placed on deposit.

2001. Request for investment (*o*).

Chancery.

To the Paymaster-General.

I request that the sum of £—— now standing to the credit of [*State the title of the cause or matter, and account, if any*], may be invested in [*State the securities in which the investment is to be made*], to be placed to the same credit.

Dated the —— day of ——, 187—.

[*Name and address of solicitor ; as in* No. 92 *ante.*]

2002. Request for certificate of investment (*p*).

Chancery.

To the Paymaster-General.

—— day of ——, 187—.

A certificate of **investment** on the —— day of —— of £——, in [*State the securities in which the instrument was made*], to the credit of [*State the title of the cause or matter, and account, if any*], is requested for the use of [*State for what purpose the certificate is required*].

[*Name and address of solicitor ; as in* No. 92 *ante.*]

(*l*) See notes (*d*), (*j*) to No. 1998 *ante*.

(*m*) See Chancery Funds Cons. Rules, 1874, rule 8 ; note (*c*) to No. 2030 *post*.

(*n*) See Chancery Funds Cons. Rules, 1874, rule 7 ; note (*d*) to No. 2030 *post*.

(*nn*) See note (*hh*) to No. 1998 *ante*.

(*o*) See Chancery Funds Cons. Rules, 1874, rule 37 ; note (*d*) to No. 1998 *ante*. As to the request, see Chancery Funds Cons. Rules, 1874, rule 93 ; note (*b*) to No. 1962 *ante*.

(*p*) See Chancery Funds Cons. Rules, 1874, rule 89 ; note (*h*) to No. 1962 *ante*. As to the request, see Chancery Funds Cons. Rules, 1874, rule 93 ; note (*b*) to No. 1962 *ante*.

2003.
Paymaster-General's certificate of investment (*p*).

Chancery.

Chancery Pay Office,
—— day of ——, 187—,

At the request of Mr. ——, solicitor for the ——, I hereby certify that on the —— day of —— the sum of £—— Consolidated £3 per cent. annuities [*or as may be*] having been **purchased** was placed to the credit of [*Title of the account to which the stock was placed*], and that the said securities were purchased with the sum of £—— cash [*Or*, money on deposit] to the same credit —— pursuant to order dated ——.

2004.
Request to discontinue investment of dividends (*q*).

Chancery.

To the Paymaster-General.

As solicitor acting on behalf of [*Name the party or person on whose behalf the request is made*], who claims to be entitled to or interested in the sum of £1,000 Consolidated £3 per centum annuities [*or as may be*] in Court to the credit of [*State the title of the cause or matter, and the account, if any, to which the securities are standing*], I request that the dividends accruing on such securities may not be invested.

[*Name and address of solicitor; as in* No. 92 *ante.*]

(*p*) See Chancery Funds Cons. Rules, 1874, rule 89; note (*b*) to No. 1962 *ante.*

(*q*) See Chancery Funds Consolidated Rules, 1874, rule 67; note (*cc*) to No. 1997 *ante.*

Section IV.—Carrying over Securities and Cash in Court.

2005. Notice of motion or summons to carry over securities, money on deposit, cash, dividends and interest (*a*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of [*State whom*], that the £1,000 Consolidated £3 per cent. annuities (*b*), the £300 money on deposit (*b*), and the £50 cash (*b*), in Court to the credit of this cause, B. *v.* D., 1875, B. 100 (*c*), and any dividends to accrue on the said annuities (*cc*), and any interest to be credited in respect of the said money on deposit may respectively be carried over to the credit of this cause, B. *v.* D., 1875, B. 100, to an account to be intituled "The account of, *&c.*" (*d*) [*If subject to duty, add:*] "subject to legacy [*Or,* succession] duty" (*e*).

(*a*) Money or securities in Court may not be carried over, except in pursuance of an order of the Court; Chancery Funds Cons. Rules, rule 36. It is not often that an application is made for a carrying over simply; a carrying over is generally directed at the original hearing, or on further consideration; or else is coupled with an application for investment, or for payment of dividends, or both. The forms in this section will therefore generally be combined with some of the other forms in this chapter, as in No. 2021 *post*. For forms of direction to carry over, see Seton, ed. 4, 92—94. When an order directs a carrying over, a request to give effect to such direction must be left at the Chancery Pay Office; Chancery Funds Cons. Rules, 1874, rule 37; for form of request, see *post* No. 2009. The Chancery Paymaster will then effect the carrying over in the books at the Chancery Pay Office; and the Chancery Paymaster may in his discretion issue a certificate of the carrying over, upon a request in writing by or on behalf of any person claiming to be interested in the money or securities carried over; Chancery Funds Cons. Rules, 1874, rule 89; for form of request and of certificate, see *post* Nos. 2010, 2011. As to the effect of carrying over a fund to a separate account, see Dan. Pr. 1646; Seton, ed. 4, 94.

(*b*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *post*.

(*c*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *post*.

(*c c*) The 46th rule of the Chancery Funds Cons. Rules, 1874 (*post*, note (*k*) to No. 2036 and note (*q*) to No. 2037), does not include the case of a carrying over of securities; there must be therefore a direction to carry over dividends accruing after the order and before the carrying over is effected; Seton, ed. 4, 95.

(*d*) For a collection of forms of headings of accounts, see 12 Beav. 210 (*n*). As to the length of the title, see Chancery Funds Cons. Rules, 1874, rule 94; note (*t*) to No. 1974 *ante*.

(*e*) See Chancery Funds Cons. Rules, 1874, rule 14.

2006.
Notice of motion or summons to carry over specific amounts of securities, and proportionate parts of dividends (*f*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of [*State whom*], that the £5,000 Consolidated £3 per cent. annuities (*g*) in Court to the credit of this cause, B. *v.* D., 1876, B. 100 (*h*), and any dividends to accrue on the said annuities (*j*) may be carried over to the credit of this cause, B. *v.* D., 1876, B. 100, to the accounts (*l*) mentioned in the first column of the schedule hereto (*k*) in the amounts and proportions in the second and third columns of the said schedule set opposite to the respective titles of such accounts.

Schedule.

1. Titles of Accounts (*l*) to which carryings over are to be made.	2. Amounts of Consolidated Annuities to be carried over.	3. Proportionate parts of dividends to be carried over.
The account of A., an infant.	£500	One-tenth.
The account of B. and his incumbrancers	£1000	One-fifth.
&c.	&c.	&c.

2007.
Notice of motion or summons to carry over specific amounts of securities, parts of a larger sum (*m*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of [*State whom*], that out of the £5,000 Consolidated £3 per cent. annuities (*n*) in Court to the credit of this cause, B. *v.* D., 1876, B. 100 (*o*), the several amounts of like annuities

(*f*) See note (*a*) to No. 2005 *ante*. As to the titles of the accounts, see notes (*d*), (*e*) to No. 2005 *ante*.

(*g*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *post*.

(*h*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *post*.

(*j*) See note (*c c*) to No. 2005 *ante*.

(*k*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*) to No. 1977 *ante*.

(*l*) See notes (*d*), (*e*) to No. 2005 *ante*.

(*m*) See note (*a*) to No. 2005 *ante*.

(*n*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *post*.

(*o*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *post*.

mentioned in the second column of the schedule hereto, making together £2,000 like annuities (*p*), may be carried over to the credit of this cause, B. *v.* D., 1876, B. 100, to the accounts (*q*) set opposite to such several amounts in the first column of the said schedule.

Schedule.

1. Titles of Accounts (*q*) to which carryings over are to be made.	2. Amounts of Consolidated Annuities to be carried over.
The account of A., an infant	£500
The account of B. and his incumbrancers . . .	£1000
The account of the settled share of J. J. . . .	£500
	£2000

2008. Notice of motion or summons to carry over securities of a given value (*r*).

Formal parts: see ante No. 1571 *or* No. 881.

on the part of [*State whom*], that so much of the £2,000 consolidated £3 per cent. annuities (*s*) in Court to the credit of this cause, B. *v.* D., 1875, B. 100 (*t*), as will, at the bank average price of like annuities on [*State when*], be equivalent to £—— cash (the amount to be verified by affidavit), may be carried over to the credit of this cause, B. *v.* D., 1875, B. 100, "The account of, *&c.*" (*u*).

2009. Request for a carrying over from one account to another (*v*).

Chancery.

To the Paymaster-General.

I request that the sum of £——, now standing to the credit of

(*p*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*) to No. 1977 *ante*.

(*q*) See notes (*d*), (*e*) to No. 2005 *ante*.

(*r*) See note (*a*) to No. 2005 *ante*.

(*s*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *post*.

(*t*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *post*.

(*u*) See notes (*d*), (*e*) to No. 2005 *ante*.

(*v*) See Chancery Funds Cons. Rules 1874, rule 37; note (*a*) to No. 2005 *ante*. As to the request, see Chancery Funds Cons. Rules, 1874, rule 93; note (*b*) to No. 1962 *ante*.

[*State the title of the cause or matter and account (if any)*], may be **carried over** to the credit of [*State the title of the cause or matter and account, to which the carrying over is to be made*].

Dated the —— day of ——, 187—.

[*Name and address of solicitor; as in* No. 92 *ante.*]

2010.

Request for certificate of carrying over of fund (*w*).

Chancery.

—— day of ——, 187—.

To the Paymaster-General.

A certificate of the **carrying over** of funds on the —— day of ——, from the credit of [*State the title of the cause or matter and account, if any, to which the fund stood*] to the credit of [*State the title of the cause or matter, and the account to which the fund was carried over*], is requested for the use of [*State for what purpose the certificate is required.*]

[*Name and address of solicitor; as in* No. 92 *ante.*]

2011.

Paymaster-General's certificate of carrying over (*w*).

Chancery.

Chancery Pay Office,

—— day of ——, 187—.

At the request of Mr. ——, solicitor for the ——, I hereby certify that on the —— day of ——, the sum of £—— was **carried over** from the credit of [*Title of the cause or matter, and account (if any) from which the carrying over was made*] to the credit of [*Title of the cause or matter, and account to which the carrying over was made*] pursuant to an order dated ——.

(*w*) See Chancery Funds Cons. Rules, 1874, rule 89; note (*b*) to No. 1962 *ante*. As to the request, see Chancery Funds Cons. Rules, 1874, rule 93; note (*b*) to No. 1962 *ante*.

Section V.—Payment of Dividends and Interest on Fund in Court (*a*).

2012. Summons for payment of dividends to tenant for life (*aa*).

Formal parts: see ante No. 881.

on the part of [*State whom*], that the dividends as they accrue

(*a*) Money in Court will not be paid out except in pursuance of an order; Chancery Funds Consolidated Rules, 1874, rule 37. An application for an order for the payment of dividends or interest on a fund in Court to any person may be made by petition or summons; Cons. Ord. XXXV. rule 1 (1); Dan. Pr. 1648, 1649. When the application is made by petition it should show the state of the funds in Court, and who are interested therein; see *post* Nos. 2041, 2071, 2205. For the sake of convenience the forms in this section have been thrown into the shape of a summons; but in each case the form may be easily adapted so as to serve as the prayer of a petition. The petition or summons must be intituled in the cause or matter, but not in any separate account therein, to the credit of which the money or securities are placed at the Chancery Pay Office; Chancery Funds Cons. Rules, 1874, rule 7; and every petition presented or summons issued in a cause must be marked with the reference to the record; Chancery Funds Amended Orders, 1874, rule 17; as to the reference to the record, see *ante*, note (*e*) to No. 210 *ante*.

(*a a*) See note (*a*), *supra*. As to the persons to be served with the petition or summons, see Dan. Pr. 1649. As to the evidence in support, see Dan. Pr. 1650. As to the papers to be left with the registrar on drawing up the order, see Dan. Pr. 1657. For forms of orders for the payment out of dividends or interest on a fund in Court, see Seton, ed. 4, 88—91. When an order has been made for the payment out of dividends to accrue on securities in Court, the Chancery Paymaster may defer giving effect thereto until a request in writing has been left at the Chancery Pay Office; Chancery Funds Cons. Rules, 1874, rule 37; but in practice this request is not required. For the purpose of obtaining payment of the first dividend which accrues due after the date of the order, the order must be left at the Chancery Pay Office, and the Chancery Paymaster will thereupon cause a cheque to be issued, which must be indorsed by the payee or his attorney; Chancery Funds Cons. Rules, 1874, rule 38. For the subsequent dividends, cheques will be drawn as they accrue without being bespoken. Where the order for payment contains conditions to be fulfilled before payment can be made, on the occasion of each payment evidence will be required by affidavit or statutory declaration to show that the condition has been fulfilled. When dividends accruing subsequently to the date of an order for their payment out have been placed on deposit, they must be withdrawn from deposit; Chancery Funds Cons. Rules, 1874, rules 74, 75; note (*u*) to No. 2033 *post*, and No. 2054 *post*; and the dividends when withdrawn from deposit, and any interest credited in respect thereof, will be applied in the same manner as the dividends would have been applied if they had not been placed on deposit; Chancery Funds Cons. Rules, 1874, rule 50; and if such dividends have been invested, the securities purchased therewith will be sold, and the proceeds of sale and any dividends accrued in respect of such securities will be applied in the same manner as the dividends invested would have been applied if they had not been invested; Chancery Funds Cons. Rules, 1874, rule 48; and the Registrar will, upon production of a certificate of investment, issue his certificate for sale; *Ibid.*, rule 49; for form of certificate for sale, see *post* No. 2023.

due (*b*) on the £—— consolidated £3 per cent. annuities [*or as may be*] (*c*) in Court to the credit of this cause, B. *v.* D., 1876, B. 100, "The account of, *&c.*" (*d*), may be paid to (the plaintiff) A. B. during his life or until further order (*e*).

2013. Summons for payment of interest to tenant for life (*f*).

Formal parts: see ante No. 881.

on the part of [*State whom*], that any interest as it accrues and is credited in respect of the £—— money on deposit (*g*) in Court to the credit of this cause, B. *v.* D., 1876, B. 100, "The account of, *&c.*" (*h*), may be paid to (the plaintiff) A. B. during his life or until further order (*j*).

(*b*) An order directing the payment of dividends, or other periodical payments, must (except in the case of dividends directed to be paid as they accrue due) specify the time when the first of such payments, and when all subsequent payments, whether quarterly, half-yearly, yearly, or otherwise shall be made; Chancery Funds Cons. Rules, 1874, rule 13; see *post* No. 2022.

(*c*) The source from which the dividends will be derived must be stated in the order; Chancery Funds Cons. Rules, 1874, rule 8.

(*d*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *post*.

(*e*) Persons to whom money is directed to be paid, and persons for or during whose lives, or other less period, payments are directed to be made, must be described in the order, or in a certificate of a chief clerk or taxing master, by name, and not merely as plaintiffs, or petitioners, or the like; unless such payments are to be made to trustees or other persons in succession, or to representatives when no probate or administration has been taken out at the date of the order or certificate; Chancery Funds Cons. Rules, 1874, rule 12. When the person to whom payment is directed is entitled as trustee, executor, or administrator, or otherwise than in his own right or for his own use, the character in which he is entitled must be stated in the order or in a certificate; *Ibid.*, rule 53. As to payment to the representatives of the person named in the order, where he dies before receiving payment, see Chancery Funds Cons. Rules, 1874, rules 53, 56; note (*e*) to No. 2030 *post*, and No. 2048 *post*. Where payment is directed to a woman, she must be described in the order as "spinster," or "widow," or "the wife of, &c."; Seton, ed. 4, 91. When dividends or interest not exceeding in the whole £10 in annual payments, are directed to be paid to a woman not married at the date of the order, and such woman afterwards marries, such dividends or interest may be paid to the woman and her husband upon proof of the marriage, and upon an affidavit to the effect mentioned in the rule; Chancery Funds Cons. Rules, 1874, rule 52; note (*j*) to No. 2030 *post*; for forms of affidavit, see *post* Nos. 2051 and 2052.

(*f*) See note (*a*) at p. 1075 *supra*; note (*aa*) to No. 2012 *ante*. For order in like case, see Seton, ed. 4, 91. As to interest on money on deposit, see Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 14; Chancery Funds Cons. Rules, 1874, rules 76—80; note (*a*) to No. 1994 *ante*.

(*g*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2012 *ante*.

(*h*) See Chancery Funds Cons. Rules, 1874, rule 27; note (*d*) to No. 2036 *post*.

(*j*) See note (*e*) to No. 2012 *ante*.

2014. Summons for payment of dividends or interest to married woman for separate use (*k*).

[*Proceed as in* No. 2012 *or* No. 2013 *ante, down to* paid, *and continue thus :*] to C., the wife of A. B., for her separate use during her life or until further order.

2015. Summons for payment of dividends or interest to husband in right of his wife (*l*).

[*Proceed as in* No. 2012 *or* No. 2013 *ante, down to* paid, *and continue thus :*] to A. B., in right of his wife C. B., during the life of the said C. B. or until further order.

2016. Summons for payment of dividends and interest to two persons and the survivor (*m*).

[*Proceed as in* No. 2012 *or* No. 2013 *ante, down to* paid, *and continue thus :*] to A. and B. during their joint lives or until further order. And that on the death of either of them such dividends [*Or*, interest] may be paid to the survivor during his life or until further order.

2017. Summons for payment of dividends or interest to the trustees of a settlement or will (*n*).

[*Proceed as in* No. 2012 *or* No. 2013 *ante, down to* paid, *and continue thus :*] to A. B., C. D., and E. F., as trustees of the indenture of settlement, dated, *&c.* [*Or*, of the will of, *&c.*], or any one or more [*If there are two only, say :* or either] of them, upon the trusts of the said indenture [*Or*, will] until further order.

(*k*) See note (*a*) at p. 1075 *supra ;* note (*aa*) to No. 2012 *ante.* For order in like case, see Seton, ed. 4, 89.

(*l*) See note (*a*) at p. 1075 *supra ;* note (*aa*) to No. 2012 *ante.* For order in like case, see Seton, ed. 4, 89.

(*m*) See note (*a*) at p. 1075 *supra ;* note (*aa*) to No. 2012 *ante.* For order in like case, see Seton, ed. 4, 90. Where several persons are entitled to interest for life in succession, the Court only directs payment to the first for his life, and on his death a further order must be obtained ; but where the persons so entitled are husband and wife, the Court directs payment to them in succession ; Seton, ed. 4, 92. For order in like case, see Seton ed. 4, 90.

(*n*) See note (*a*) at p. 1075 *supra ;* note (*aa*) to No. 2012 *ante.* For order in like case, see Seton, ed. 4, 88. As to stating in the order the fact that the persons to whom payment is to be made are trustees, or are entitled otherwise than in their own right or for their own use, see Chancery Funds Cons. Rules, 1874, rule 53 ; note (*c*) to No. 2012 *ante.* If an order is made in the form in the text, any one of the trustees can receive the dividends or interest until all have ceased to be trustees ; Seton, ed. 4, 88.

2018.
Summons for payment of dividends or interest to the trustees for the time being of a charity (*o*).

[*Proceed as in* No. 2012 *or* No. 2013 *ante, down to* paid, *and continue thus :*] to A. B., C. D., *&c.*, as trustees of the —— Charity, or any two of them, or to the trustees of the said —— Charity, for the time being, or any two of them, until further order.

2019.
Summons for payment of dividends or interest to a corporation sole (*p*).

[*Proceed as in* No. 2012 *or* No. 2013 *ante, down to* paid, *and continue thus :*] to A. B., as rector of the parish of ——, and to his successor, the rector of the said parish for the time being, until further order.

2020.
Summons for payment of dividends or interest to the officer of a corporation aggregate (*q*).

[*Proceed as in* No. 2012 *or* No. 2013 *ante, down to* paid, *and continue thus :*] to A. B., as the treasurer of the [*Insert style or title of the corporation*], and to the treasurer for the time being of the said (corporation) until further order.

2021.
Summons to carry over specific amounts of securities, and for payment of dividends to persons named in schedule (*r*).

[*Proceed as in* No. 2007 *ante, to* first column of the said schedule, *and continue thus :*] And that the dividends as they accrue (*s*) on the amounts so to be carried over, may be paid to the persons whose names (*t*) are, in the third column of the said schedule, set opposite to such amounts respectively during the lives of such persons respectively, or until further order.

(*o*) See note (*a*) at p. 1075 *supra ;* note (*aa*) to No. 2012 *ante*. For order in like case, see Seton, ed. 4, 89.

(*p*) See note (*a*) at p. 1075 *supra ;* note (*aa*) to No. 2012 *ante*. For order in like case, see Seton, ed. 4, 89.

(*q*) See note (*a*) at p. 1075 *supra ;* note (*aa*) to No. 2012 *ante*. For order in like case, see Seton ed. 4, 89. The application should be in this form, where the corporation has a treasurer or other financial officer, to whom the money is properly payable ; but the application may be for payment to the corporation, and will then be received under a power of attorney under the seal of the corporation ; Seton, ed. 4, 92 ; for form of order for payment to a corporation aggregate, see *ibid.*, 89.

(*r*) See the notes to No. 2005 *ante*. See also note (*a*) at p. 1075 *supra ;* and note (*aa*) to No. 2012 *ante*. For order in like case, see Seton, ed. 4, 91.

(*s*) See Chancery Funds Cons. Rules, 1874, rule 13 ; note (*b*) to No. 2012 *ante*.

(*t*) See note (*e*) to No. 2012 *ante*.

Schedule.

1. Titles of accounts to which carryings over are to be made.	2. Amounts of consolidated annuities to be carried over.	3. Payees of dividends.
The account of the settled share of A., the wife of C. B.	£500	A., the wife of C. B., for her separate use.
The account of B. and his incumbrancers	£1000	B.
The account of the settled share of J. J.	£500	J. J.
	£2000	

2022. Summons for quarterly payments out of dividends (*u*).

Formal parts : see ante No. 881.

on the part of [*State whom*], that out of the dividends as they accrue due on the £—— consolidated £3 per cent. annuities [*or as may be*] (*v*) in Court to the credit of [*&c. : as in* No. 2012 *ante*] (*w*), the sum of £—— a year, without deducting income-tax (*x*), may be paid to A. (*y*) during his life, or until further order, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, the first of such payments to be made on the —— day of ——, 187— (*z*).

(*u*) See note (*a*) at p. 1075 *supra ;* note (*aa*) to No. 2012 *ante.* For order in like case, see Seton, ed. 4, 91.

(*v*) See Chancery Funds Cons. Rules, 1874, rule 8 ; note (*c*) to No. 2012 *ante.*

(*w*) See Chancery Funds Cons. Rules, 1874, rule 7 ; note (*d*) to No. 2030 *post.*

(*x*) Where an order directs an annuity or other periodical payment to be made out of dividends on securities in Court, in respect of which dividends income tax has been deducted, the Chancery Paymaster will draw only for so much of the sum directed to be paid as remains after deducting income tax therefrom at the same rate as has been deducted from the dividends, unless the sum is directed to be paid without making such deduction ; Chancery Funds Cons. Rules, 1874, rule 59.

(*y*) See note (*e*) to No. 2012 *ante.*

(*z*) See Chancery Funds Cons. Rules, 1874, rule 13 ; note (*b*) to No. 2012 *ante.*

2023. Certificate for sale where dividends have been invested (*a*).

High Court of Justice,
Chancery Division.
To the Paymaster-General.
B. *v.* D., 1876, B. 100.

Pursuant to the order dated the —— day of ——, 187—, the 48th of the Chancery Funds Consolidated Rules, 1874, and the certificate of investment and of the fund, £—— consolidated £3 per cent. annuities in Court to the credit of [*State title of cause or matter and account (if any)*] are to be sold.

2024. Request for power of attorney to receive dividends (*b*).

Chancery.
To the Paymaster-General.

A power of attorney is requested from A. B., of [*address and description*], the person named or referred to in an order of the Court dated [*Or*, in a certificate filed ; *Or*, in an affidavit filed] the —— day of ——, 187—, to E. F., of [*address and description*]
[*If there are several grantees, add ;*] and C. D., of [*address and description*], jointly and severally
who is [*Or*, are] well known to me, to receive the dividends as they accrue during the life of the said A. B. [*or as may be*] on the [*Here insert the description and amount of the securities on which the dividends are to be received, as thus :* £5,000 consolidated £3 per cent. annuities] in Court on the credit of [*Short title of cause or matter and account, if any*].

Dated —— day of ——, 187—.
B. W. S.
[*Or*, B. W. S. for S. & C.]

(*a*) See Chancery Funds Cons. Rules, 1874, rules 48, 49 ; note (*aa*) to No. 2012 *ante*.

(*b*) If the person entitled to receive principal money, or interest or dividends, under an order, is unable to attend at the Chancery Pay Office to receive the cheque for the amount due to him, he must authorise some one to act for him by a special power of attorney. This power of attorney is prepared in the Chancery Pay Office. For the purpose of obtaining it, a written request must be signed by the solicitor himself bespeaking the power, or, if it is bespoken by a firm of solicitors, the request must be signed by one of the firm with his own name on behalf of the firm, and must be left with the order directing the payment at the Chancery Pay Office. As to the request, see further, Chancery Funds Cons. Rules, 1874, rule 93 ; note (*b*) to No. 1962 *ante*. The Chancery Paymaster will then prepare the power of attorney. The power when issued from the Chancery Pay Office has annexed to it instructions as to the mode of execution thereof, and also a form of affidavit of due execution thereof. For preparing the power a fee is payable of 3*s*., by means of a stamp impressed on the power ; Ord. as to Court Fees, Oct. 1875 ; Ord. as to Fees, April, 1876 ; Wilson, 506, 522. As to the stamp duty on powers of attorney, see the Stamp Act, 1870 (33 & 34 Vict. c. 97), Sched., Letter or Power of Attorney.

2025. Request to pay money to attorney (*c*).

Chancery.

To the Paymaster-General.

Be pleased to pay to Mr. ——, by virtue of my letter of attorney granted to him, the half-yearly payment due to me on the —— day of ——, 187—, out of cash to the credit of ——.

2026. Certificate of life of payee (*c*).

We, the minister and one of the churchwardens of the parish of ——, in the county of ——, do hereby certify, that the above-named —— was living on the —— day of ——, 187—.

N. M., Minister.
P. R., Churchwarden.

2027. The like, where he is abroad (*c*).

I, [*the Notary, Consul-General, Ambassador, or Secretary of Embassy, as may be most convenient to the party abroad*], do hereby certify, that the above-written —— came before me on the —— day of ——, 187—, and signed the above order in my presence, of which act evidence being required, I hereby certify the same under my hand and seal of office.

Done at ——, the —— day of ——.

2028. Affidavit of life of payee (*c*).

In the High Court of Justice,
Chancery Division.
[*Short title of cause or matter on which the fund is standing.*

I, A. B., of [*residence and addition*], make oath and say that C. D., of [*residence and addition*], the person named in an order in this cause [*Or*, matter], dated the —— day of ——, was alive on the —— day of ——, and is, as I verily believe, still living.

2029. Statutory declaration of life of payee (*c*).

For formal parts: see ante No. 1987.

that C. D., the person named in an order made in a cause [*Or*, matter] of [*State short title of the cause or matter*] and dated the —— day of ——, was alive on the —— day of ——, and is, as I believe, still living.

(*c*) On each occasion that a payment of dividends or other periodical payment is made to a person under a power of attorney, the existence of the payee's life on the day on which the payment became due must be proved; this is done by means of a request signed by the payee, under which is written a certificate from the minister and one of the churchwardens, or in the absence of the minister, from both of the churchwardens of the parish in which the party resides; or, if the party is resident abroad, a certificate from the ambassador, secretary of embassy, consul-general, or a notary; or by an affidavit or statutory declaration.

Section VI.—Payment of Money and Sale, Transfer and Delivery of Securities and Effects out of Court (*a*).

2030. Summons for payment out of Court of cash (part of a larger sum) (*b*).

Formal parts : see ante No. 881.

on the part of [*State whom*], that the sum of £100 (part of the

(*a*) No securities standing to the account of the Paymaster-General in pursuance of the Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), are to be transferred, sold, or delivered out except in pursuance of an order of the Court ; 35 & 36 Vict. c. 44, s. 10 ; and by the Chancery Funds Cons. Rules, 1874, rule 36, securities in Court are not to be sold, transferred, or delivered out, and money in Court is not to be paid out, except in pursuance of an order. Even in cases coming within R. S. C. Ord. XXX. 3 (*ante*, note (*q*) to No. 397), the Paymaster-General requires an order of the Court for payment out. The application for a payment, transfer, or delivery out, is made by petition or summons. When made by petition, the petition should show the state of the funds in Court, and should state who are interested in the fund, and the nature of their interests therein ; see *post* Nos. 2041, 2071, 2177, 2206, 2252, 2348. For the sake of convenience, the forms in this section have generally been thrown into the shape of a summons ; but in each case the form may easily be adapted so as to serve as the prayer of a petition. The petition or summons must be intituled in the cause or matter (but not in any separate account therein), to the credit of which the money or securities are placed in the books at the Chancery Pay Office ; Chancery Funds Cons. Rules, 1874, rule 7 ; and every petition presented or summons issued in a cause must be marked with a reference to the record ; Chancery Funds Amended Ords. 1874, rule 17 ; as to the reference to the record, see *ante*, note (*s*) to No. 210.

(*b*) See note (*a*) *supra*. As to the persons who should be served with the petition or summons, see Dan. Pr. 1649. As to the evidence in support, see *ibid.*, 1650. For order in like case, see Seton, ed. 4, 95. As to the papers to be left with the Registrar on bespeaking the order, see Dan. Pr. 1657. When an order directs the payment out of money in Court, the Chancery Paymaster may defer giving effect to such direction until a request in writing to give effect thereto has been left at the Chancery Pay Office ; Chancery Funds Cons. Rules, 1874, rule 37 ; but in practice this request is not required, it being sufficient to leave the order at the Chancery Pay Office. When money is to be paid out of Court, the Chancery Paymaster will (except in the cases to be presently mentioned) cause a cheque to be issued, which must be endorsed by the payee named therein or his lawful attorney ; Chancery Funds Cons. Rules, 1874, rule 38. If such cheque be not cashed within a month it becomes void. But when money in Court is payable to an official person for whom an account is kept at the Bank of England, the order should direct the amount to be transferred to the proper account of such official person, and the Chancery Paymaster will, upon the requisition of such person, direct the Bank to transfer the amount payable from the Chancery Pay Office account to the account of such official person ; Chancery Funds Cons. Rules, 1874, rule 41 ; for form of requisition, see *post* No. 2053. Where, subsequently to the date of an order for the payment of money out of Court, the money has been placed on

sum of £1,000) cash (*c*) in Court to the credit of this cause, B. *v.* D., 1876, B. 100, "The account of, *&c.*" (*d*), may be paid to (the applicant) A. B. (*e*) [*Or*, to A. B. and C. D., as the legal

deposit, the same when withdrawn from deposit (see Chancery Funds Cons. Rules, 1874, rules 74, 75; note (*u*) No. 2033 *post*, and No. 2054 *post*), and any interest credited in respect thereof, are to be applied in the same manner as the money would have been applied had it not been placed on deposit; Chancery Funds Cons. Rules, 1874, rule 50.

(*c*) Every order dealing with money or securities in Court, must express the amount of money or securities standing in the books of the Chancery Pay Office at the date of such order, to the credit of the cause or matter to which the money or securities to be dealt with may be placed; and must also express the exact amount of money or securities to be dealt with, whenever it can be ascertained; and in every case the exact amount of money or securities to be dealt with, must be expressed either in an order or in a certificate of a chief clerk or taxing master; unless the money be (1) payable for legacy or succession duty; or (2) be described as dividends to accrue on securities in Court, or to be brought into Court, or as interest to be credited in respect of money on deposit; or (3) be described as money to arise by the realisation of securities; or (4) be described as the residue of such dividends, interest, money, or securities respectively, after deducting an amount expressed in an order or in a certificate, or an amount of securities directed to be realised unascertained at the date of the order directing the realisation thereof, or as an aliquot or proportionate part of such dividends, interest, money, securities, or residue respectively; Chancery Funds Cons. Rules, 1874, rule 8. For the purpose of ascertaining the amount of any residue or aliquot or proportionate part of money, securities, dividends, or interest, the Chancery Paymaster may, without any direction in the order for that purpose, receive and act upon an affidavit or statutory declaration; *Ibid.*, rules 8, 86; for form of affidavit or declaration in like case, see *post* No. 2047.

(*d*) Every order dealing with money or securities in Court, must state in the body of the order and not merely by reference to the title of it, the exact title of the cause or matter and separate account, if any, to the credit of which the money or securities dealt with are standing; Chancery Funds Cons. Rules, 1874, rule 7.

(*e*) Persons to whom money or securities are directed to be paid, transferred, or delivered, must be described in the order or in a certificate of a chief clerk or taxing master, by name, and not merely as plaintiffs or petitioners, or the like; unless such payments, transfers, or deliveries, are to be made to trustees or other persons in succession, or to representatives when no probate or letters of administration shall have been taken out at the date of the order or certificate; Chancery Funds Cons. Rules, 1874, rule 12. When a person to whom money or securities are directed to be paid, transferred, or delivered, is entitled thereto as real estate, or as trustee, executor, or administrator, or otherwise than in his own right or for his own use, the fact that he is entitled to the same as real estate, or the character in which he is entitled must be stated in the order or certificate; Chancery Funds Cons. Rules, 1874, rule 53. If money or securities are directed to be paid, transferred, or delivered to a person not appearing to be entitled thereto as real estate, or as trustee, executor, or administrator, or otherwise than in his own right or for his own

personal representatives of G. H. deceased (*f*); *Or*, to the legal personal representatives of G. H. deceased, when constituted (*g*); *Or*, to A. B. and C. D. as co-partners (*h*); *Or*, to A. B. spinster (*j*); *Or*, to A. B. widow (*j*); *Or*, to A., the wife of C. B. (*j*), for her

use, and such person dies, the money or securities, or any portion thereof remaining unpaid, untransferred or undelivered, may, upon proof of the death of such person, be paid, transferred, or delivered to his legal personal representatives, or to the survivors or survivor of them; *Ibid.*, rule 53; but no money or securities will be paid or transferred under this rule to representatives under a probate or letters of administration granted at any time subsequent to the expiration of six years from the date of the order; *Ibid.*, rule 56. For form of affidavit under rule 53, see *post* No. 2048.

(*f*) As to stating in the order the character in which a party is entitled, who is entitled as trustee, executor, or administrator, or otherwise than in his own right or for his own use, see Chancery Funds Cons. Rules, 1874, rule 53; note (*e*) *supra*. Where money or securities are payable, transferable, or deliverable to any persons as legal personal representatives, such money or securities, or any portion remaining unpaid, untransferred or undelivered, may, upon proof of the death of any such representatives, be paid, transferred, or delivered to the survivors or survivor of them; Chancery Funds Cons. Rules, 1874, rule 54. For form of affidavit in the like case, see *post* No. 2049.

(*g*) When a payment, transfer, or delivery is directed to be made to representatives, when no probate or letters of administration shall have been taken out at the date of the order, it is not necessary to describe such persons by name; Chancery Funds Cons. Rules, rule 12; note (*c*) *supra*. If any of the representatives die before payment, transfer, or delivery, the payment, transfer, or delivery, may, upon proof of the death, be made to the survivors or survivor; Chancery Funds Cons. Rules, 1874, rule 54; note (*f*) *supra*. For form of affidavit in the like case, see *post* No. 2050.

(*h*) When money in Court is directed to be paid to persons described in the order, or in a certificate, as co-partners, the money may be paid to any one or more of such co-partners; Chancery Funds Cons. Rules, 1874, rule 53; and if any of such co-partners die before payment, the money may, upon proof of death, be paid to the survivors or survivor of them; *Ibid.*, 54.

(*j*) When payment is directed to a woman, she must be described as "spinster," or "widow," or the "wife of &c.;" Seton, ed. 4, 91. When money or securities in Court are directed to be paid, transferred, or delivered to a woman not married at the date of the order, and before payment, transfer, or delivery the woman marries, the money, if it does not exceed £200, or the securities, if they or the aggregate of such securities and money do not exceed in value £200, may be paid, transferred, or delivered to the woman and her husband, upon proof of the marriage, and an affidavit of the woman and her husband of no settlement or agreement for a settlement, or identifying the settlement or agreement for a settlement, and stating that no other has been made or entered into, and (where there is a settlement or agreement for settlement) an affidavit of the solicitor of the woman and husband that such settlement or agreement does not comprise or affect the money or securities or any part thereof; Chancery Funds Cons. Rules, 1874, rule 52; for forms of affidavits in like cases, see *post* Nos. 2051, 2052.

separate use and on her separate receipt (*k*); *Or*, to A. B., he undertaking duly to account for the same, and to distribute the same among the parties entitled thereto (*jj*).]

2031.
Consent of legatees or creditors to payment to a solicitor of small sums to which they are entitled (*jj*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

We, whose names and signatures respectively are set forth in the first and second columns hereunder written, hereby request that the several sums of money set opposite our respective names in the third column hereunder written, and which have been certified to be due to us by the Chief Clerk's certificate dated the ——, 187—, as legatees under the will [*Or*, creditors upon the estate] of the testator A. B. [*or as may be*], may be paid to Mr. E. F., of [*place of business*], the plaintiff's solicitor [*or as may be*]: upon his undertaking to account for the same to us respectively.

Christian and surnames.	Signatures.	Amounts payable. £	s.	d.	Signature and address of witness.
William Jones . .	Wm. Jones .	8	6	3	X. Y., of (*address and description*).
Thomas Sharp and Arthur Clark (as partners) . .	Sharp & Clark	3	8	9	

(*k*) The Judges have laid down a rule, that a sum not exceeding £500, standing to the account of "A., the wife of C. B.," may be ordered to be paid to the married woman on her separate receipt, without having her examined; but in each case the discretion is to be exercised by the Judge himself: *per* M. R. in Chambers, *Re Simpson's Estate*, 14 Dec. 1876.

(*jj*) As a general rule, the Court will not order payment of a fund to any other person than the person entitled thereto; but if the amount payable to each person does not exceed £10, the Court will order payment to the solicitor having the conduct of the proceedings, or to one of the parties, upon his undertaking to distribute the fund among the persons entitled thereto; but a written authority of the persons interested must be produced, stating that they consent to the fund being so paid; and the signatures to this authority must, in general, be verified by affidavit; Dan. Pr. 1654, 1655; Seton, ed. 4, 104, 105. For form of authority, see *post* No. 2031.

2032. Summons for payment out of Court of cash to several persons named or described in schedule (*l*).

Formal parts : see ante No. 881.

on the part of [*State whom*], that the sum of £500 cash (*m*) in Court to the credit of this cause, B. *v.* D., 1876, B. 100 (*n*), may be paid to the persons named or described (*o*) in the first column of the schedule hereto (*p*), in the amounts set opposite to the respective names or descriptions of such persons in the second column of the said schedule.

Schedule.

1. Payees.	2. Amounts of cash to be paid.
1. The applicant, A. B., spinster (*q*) . . .	£150
2. C. D., the legal personal representative of E. F. (*r*)	£100
3. The legal personal representative of G. H., when constituted (*s*)	£100
4. I. K. and L. M., as co-partners (*t*) . . .	£150
	£500

(*l*) See note (*a*) at p. 1082, and note (*b*) to No. 2030 *ante*. For order in like case, see Seton, ed. 4, 96.

(*m*) See Chancery Funds Cons. Rules, 1874, rule 8 ; note (*c*) to No. 2030 *ante*.

(*n*) See Chancery Funds Cons. Rules, 1874, rule 7 ; note (*d*) to No. 2030 *ante*.

(*o*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*) to No. 2030 *ante*.

(*p*) See Chancery Funds Cons. Rules, 1874, rule 9 ; note (*h*) to No. 1977 *ante*.

(*q*) See Chancery Funds Cons. Rules, 1874, rule 52 ; note (*j*) to No. 2030 *ante*.

(*r*) See Chancery Funds Cons. Rules, 1874, rules 53, 54 ; note (*f*) to No. 2030 *ante*.

(*s*) See Chancery Funds Cons. Rules, 1874, rules 12, 54 ; note (*g*) to No. 2030 *ante*.

(*t*) See Chancery Funds Cons. Rules, 1874, rules 53, 54 ; note (*h*) to No. 2030 *ante*.

2033.
Summons for payment out of Court of money on deposit (*u*).

Formal parts: see ante No. 881.
on the part of [*State whom*], that the £500 money on deposit (*v*) in Court, to the credit of this cause, B. *v.* D., 1876, B. 100 (*w*), and any interest to be credited in respect thereof (*x*), may be paid to (*y*) (the applicant) A. B. [*or as may be; see ante* No. 2030 (*z*)].

2034.
Summons for payment out of Court of money on deposit to several persons named or described in schedule in proportionate shares (*a*).

Formal parts: see ante No. 881.
on the part of [*State whom*], that the £500 money on deposit (*b*) in Court, to the credit of this cause, B. *v.* D., 1876, B. 100 (*c*), and any interest to be credited in respect thereof (*d*), may be paid to the persons named or described (*e*) in the first column of the schedule (*f*) hereto, in the proportions in the second column of

(*u*) See note (*a*) at p. 1082, *supra*. As to the persons who should be served with the summons or petition, see Dan. Pr. 1649. As to the evidence in support, see *Ibid.*, 1650. As to the papers to be left with the Registrar on bespeaking the order, see *Ibid.*, 1657. For order in like case, see Seton, ed. 4, 97. Before an order dealing with money on deposit can be acted on, a request in writing signed by a person claiming to be entitled to such money or interested therein, or by a solicitor acting on his behalf, for the withdrawal of such money from deposit, must be left at the Chancery Pay Office; as soon as may be and not later than a week after the leaving of such request, the money will be withdrawn, and will then be applied as directed by the order; Chancery Funds Cons. Rules, 1874, rules 74, 75; for form of request to withdraw the money from deposit, see *post* No. 2054. The money will then be paid out by cheque or transfer as directed by rules 38, 41; see note (*b*) to No. 2030 *ante*.

(*v*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante*.

(*w*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante*.

(*x*) As to interest on money on deposit, see Chancery Funds Cons. Rules, 1874, rules 76 to 80; note (*a*) to No. 1994 *ante*.

(*y*) See Chancery Funds Cons. Rules, 1874, rules 12, 53; note (*c*) to No. 2030 *ante*.

(*z*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante*.

(*a*) See note (*a*) at p. 1082, *ante*; and note (*u*) to No. 2033 *ante*.

(*b*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante*.

(*c*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante*.

(*d*) See note (*x*) to No. 2034 *ante*.

(*e*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*) to No. 2030 *ante*.

(*f*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*) to No. 1977 *ante*.

the said schedule set opposite to the respective names or descriptions of such persons.

Schedule.

1. Payees.	2. Proportionate shares of money and interest to be paid.
1. The applicant, A. B.	Three twenty-fourths.
2. C. D., the legal personal representative of E. F.	Seven twenty-fourths.
3. I. K. and L. M., as co-partners	Nine twenty-fourths.
4. The legal personal representative of O. P., when constituted	Five twenty-fourths.

2035. Summons for sale of securities to raise a sum certain, dividends and cash to be taken in aid (*ff*).

Formal parts: see ante No. 881.

on the part of [*State whom*], that so much of the £1000 Consolidated £3 per cent. annuities [*or as may be; describe the securities* (*g*)] in Court to the credit of this cause, B. *v.* D., 1876, B.

(*ff*) See note (*a*) at p. 1082, *supra*. As to the persons who should be served with the petition or summons, see Dan. Pr. 1649. As to the evidence in support, see *Ibid.*, 1650. As to the papers to be left with the Registrar on bespeaking the order, see *Ibid.*, 1657. For order in like case, see Seton, ed. 4, 109. In order to carry out the sale, the certificate of a Registrar of the Court is necessary; Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 10; for the purpose of obtaining this certificate, the original order or an office copy thereof must be produced to the Registrar; Chancery Funds Cons. Rules, 1874, rule 42; as to the contents of such certificate, see *Ibid.*, rule 42; for form of certificate, see *post* No. 2056. The order and the Registrar's certificate must then be left with the Chancery Paymaster, who will thereupon issue a direction to the Bank of England to receive the proceeds of sale and place them to the Chancery Pay Office account, and such proceeds will be placed in the books at the Chancery Pay Office to the credit to which the securities were standing at the time of the sale; Chancery Funds Cons. Rules, 1874, rule 43; finally, upon production of the Registrar's certificate countersigned by the Chancery Paymaster, and of the receipt from the Bank of England for the proceeds of sale, the bank, body corporate, or company, in whose books or with whom the securities sold are standing or deposited, will cause the transfer or delivery of the securities necessary to complete the sale to be made by their proper officer; *Ibid.*, rule 43. When the proceeds of sale are directed to be paid out, the payment out will be made by cheque or transfer, as directed by rules 38, 41; see note (*b*) to No. 2030 *ante*.

(*g*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante*.

100, "The account of, *&c.*" (*h*), as with any dividends to accrue on the said annuities, will raise £280, may be sold. And that out of the money to arise by such sale and the said dividends (if any), and £20 cash in Court to the same credit, the sum of £300 may be paid to (the applicant) A. B. [*or as may be; see ante* No. 2030 (*j*)].

2036. Summons for sale of securities in Court, and for payment thereout of legacy or succession duty and costs, and for payment of the residue to the applicant (*k*).

Formal parts: see ante No. 881.

on the part of A. B., of [*residence and addition*], late an infant, but now of full age:

1. That the £400 Consolidated £3 per cent. annuities [*or as may be; describe the securities* (*l*)] in Court to the credit of this cause, B. *v.* D., 1876, B. 100, "The account of A. B., an infant" (*m*), may be sold.

2. That out of the money to arise by such sale and out of the £10 money on deposit in Court to the same credit, and any interest to be credited in respect of such money on deposit, £—— being the assessed amount

[*Or, if the duty has not been assessed, say:*] the assessed amount to be verified by affidavit

of the legacy [*Or,* succession] duty payable in respect of [*&c.: state what*], may upon the requisition of the Commissioners of Inland Revenue be transferred to the account of the Receiver-General of Inland Revenue at the Bank (*n*).

[3. That

(*h*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante*.

(*j*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*) to No. 2030 *ante*.

(*k*) See note (*a*) at p. 1082, *supra*; note (*ff*) to No. 2035 *ante*. Where securities in Court are directed to be realised, and the whole of the proceeds paid out or carried over in one sum, or in aliquot or proportionate parts (except where the realisation is to raise a specific sum of money), any dividends accruing on such securities subsequent to the date of the order directing the realisation, will be added to the proceeds and applied in like manner therewith; Chancery Funds Cons. Rules, 1874, rule 46; and if such dividends have been invested, the securities purchased therewith will be sold, and the proceeds of sale applied in the same manner as the dividends so invested would have been applied if they had not been invested; *Ibid.*, rule 48. Upon production of a certificate of investment, the Registrar will issue his certificate for sale; *Ibid.*, rule 49. For form of certificate, see *post* No. 2057.

(*l*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante*.

(*m*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante*.

(*n*) See Chancery Funds Cons. Rules, 1874, rules 14 and 57. As to the form of the order, see *Ibid.*, rule 41. Upon the order being left at the Chancery Pay Office, together with the requisition (see *post* No. 2053) of the Commissioners of Inland Revenue for the transfer of the duty to the account of

3. That it may be referred to the Taxing Master to tax the costs of this application as between solicitor and client, and that out of the residue of the money to arise by such sale and of the said money on deposit and interest, the said costs, when so taxed, may be paid to Mr. L. and Mr. M., co-partners (*o*), the applicant's solicitors.

4. That the residue of the money to arise by the said sale and of the said money on deposit and interest, after making the payments hereinbefore mentioned, may be paid to the applicant A. B. [*or as may be: see ante* No. 2030 (*p*)].

2037.

Summons for transfer out of Court (*q*).

Formal parts: see ante No. 881.

on the part of [*State whom*], that £1,000 Consolidated £3 per cent. annuities [*or as may be* (*r*); *if so, add:* part of £5,000 like

the Receiver-General of Inland Revenue at the bank, and (if the amount of the duty be not stated in the order) an affidavit or declaration verifying the amount, the Chancery Paymaster will issue a direction to the bank to transfer the amount of such duty from the Chancery Pay Office account to the account of the Receiver-General of Inland Revenue; Chancery Funds Cons. Rules, 1874, rules 41, 57.

(*o*) See Chancery Funds Cons. Rules, 1874, rules 53, 54; note (*h*) to No. 2030 *ante*.

(*p*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante*.

(*q*) See note (*a*) at page 1082, *supra*. As to the persons who should be served with the petition or summons, see Dan. Pr. 1649. As to the evidence in support, see *Ibid.*, 1650. As to the papers to be left with the Registrar on bespeaking the order, see *Ibid.*, 1657. For order in like case, see Seton, ed. 4, 97. In order to carry out the transfer, the certificate of a Registrar of the Court is necessary; Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 10; for the purpose of obtaining this certificate, the order or an office copy thereof must be produced to the Registrar; Chancery Funds Cons. Rules, 1874, rule 42; as to the contents of the certificate, see *Ibid.*, rule 42; for form of certificate, see *post* No. 2058. The order and certificate must then be left with the Chancery Paymaster, who will then issue a direction for the transfer; Chancery Funds Cons. Rules, 1874, rule 45; as to the contents of this direction, see *Ibid.*, rule 45; this direction, and the Registrar's certificate countersigned by the Chancery Paymaster, must be produced to the bank, body corporate, or company in whose books the securities are standing, who will thereupon cause the transfer to be made by their proper officer, and will return the direction to the Chancery Pay Office with a certificate of transfer thereon; *Ibid.*, rule 45. When securities in Court are directed to be transferred out, dividends accruing thereon subsequently to the date of the order for transfer, will be paid to the persons to whom the securities are directed to be transferred; Chancery Funds Cons. Rules, rule 46; or if such dividends have been invested, the securities purchased with the dividends will be transferred, and any dividends accrued in respect thereof will be paid to such persons; *Ibid.*, rule 47; and upon a certificate of investment, the Registrar will issue his certificate for transfer; *Ibid.*, rule 49; for form of certificate, see *post* No. 2060.

(*r*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante*.

annuities [*or as may be*]] in Court to the credit of this cause, B. *v.* D., 1876, B. 100 (*s*), may be transferred to (the applicant) A. B. [*or as may be: see ante* No. 2030 (*t*)].

2038. Summons by a married woman for the transfer of a fund into her name, under the Married Women's Property Act, 1870, sec. 3 (*u*).

Formal parts: see ante No. 881.
on the part of A. B., the wife of C. B., of [*residence and addition*], by D. E., of [*residence and addition*], her next friend, that the £200 Consolidated £3 per cent. annuities (*v*) in Court to the credit of this cause, B. *v.* D., 1876, B. 100, "The account of A., the wife of C. B." (*w*), may be transferred into the name of the said A. B., the wife of C. B., as a married woman entitled to her separate use (*x*). And that the £—— cash in Court, and any dividends to accrue on the said annuities previous to such transfer (*y*), may be paid to the said A. B. for her separate use and on her separate receipt.

2039. Summons for the transfer and payment of specific sums of stock and cash to several persons named or described in schedule (*a*).

Formal parts: see ante No. 881.
on the part of [*State whom*], that the £2,000 Consolidated £3

(*s*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante*.

(*t*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante*.

(*u*) See Dan. Pr. 1653, 1654. As to the form, &c. of the application, see *ante*, note (*a*) at p. 1082, and note (*q*) to No. 2037. For orders in like case, see *Re Bartholomew*, 18 Nov. 1870, Reg. Lib. A. 2929; *Re Butlin*, 3 Dec. 1870, Reg. Lib. A. 2930; *Brown* v. *Gellatley*, 25 Jan. 1871, Reg. Lib. A. 169. As to the mode of carrying out the transfer, see Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 10; Chancery Funds Cons. Rules, 1874, rules 42, 45: note (*q*) to No. 2037 *ante*. Previously to the transfer being made, the form provided by the bank under s. 3 of the Married Women's Property Act, 1870, must be signed by the married woman, and lodged at the bank; Dan. Pr. 1654, note (*k*).

(*v*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante*.

(*w*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante*.

(*x*) See the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), s. 3; Dan. Pr. 1653.

(*y*) See Chancery Funds Cons. Rules, 1874, rules 46, 47, 49; note (*q*) to No. 2037 *ante*.

(*a*) See note (*a*) at p. 1082, *supra*; note (*h*) to No. 1977 *ante*; and note (*q*) to No. 2037 *ante*. For order in like case, see Seton, ed. 4, 97. As to the mode of making the payment, see Chancery Funds Cons. Rules, 1874, rules 38, 41; note (*b*) to No. 2030 *ante*; and where the money has been placed on deposit; Chancery Funds Cons. Rules, 1874, rule 50; note (*b*) to No. 2030 *ante*; as to the mode of making the transfer, see Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 10; Chancery Funds Cons. Rules, 1874, rules 42, 45; note (*q*) to No. 2037 *ante*. As to dividends accruing on the securities subsequently to the order and before the transfer, see Chancery Funds Cons. Rules, 1874, rules 46, 47, 49; note (*q*) to No. 2037 *ante*.

per centum annuities (*b*), the £1,000 India £4 per cent. stock (*b*), and the £500 cash (*b*) respectively in Court to the credit of this cause, B. *v.* D., 1876, B. 100 (*c*), may be respectively transferred and paid to the persons named or described (*d*) in the first column of the schedule hereto (*dd*), in the amounts set opposite to the respective names or descriptions of such persons in the second, third, and fourth columns of the said schedule.

Schedule.

1. Transferees and payees.	2. Amounts of consolidated annuities to be transferred.	3. Amounts of India £4 per cent. stock to be transferred.	4. Amounts of cash to be paid.
1. The plaintiff, A. B. . . .	1000	500	250
2. C. D., the legal personal representative of E. F. . .	500	250	125
3. The legal personal representative of G. H., when constituted	500	250	125
	£2000	£1000	£500

2040. The like, where the sums dealt with are parts of larger sums (*e*).

Formal parts: see ante No. 881.

on the part of [*State whom*], that out of the £5,000 Consolidated £3 per cent. annuities (*f*), the £2,000 India £4 per cent. stock (*f*), and the £1,000 cash (*f*) respectively in Court to the

(*b*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante*.

(*c*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante*.

(*d*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante*.

(*dd*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*) to No. 1977 *ante*.

(*e*) See note (*a*) to No. 2039 *ante*. For order in like case, see Seton, ed. 4, 98.

(*f*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante*.

credit of this cause, B. *v.* D., 1876, B. 100 (*g*), the several amounts of Consolidated £3 per cent. annuities mentioned in the second column of the schedule hereto, making together £2,000 like annuities (*h*), and the several amounts of India £4 per cent. stock mentioned in the third column thereof, making together £1,000 like stock (*h*), and the several amounts of cash mentioned in the fourth column thereof, making together £500 cash (*h*), may be respectively transferred and paid to the persons whose names or descriptions (*j*) are set opposite to the same in the first column thereof.

Schedule.

[*Same as in* No. 2039 *ante.*]

2041. Petition for payment and transfer out of Court (*k*).

Formal parts: see ante No. 1578.

The humble petition of A. B., of [*residence and addition*].

Showeth as follows:

[*Show the applicant's title; as thus:*] 1. C. D., the testator in the pleadings of this cause named, by his will dated the —— of ——, 187—, bequeathed to the defendants E. F., and G. H., £12,000 Consolidated £3 per cent. annuities, upon trust to pay the income thereof to his niece N. B., the wife of J. B., for her life, for her separate use; and, after her decease, upon trust for such of her children by the said J. B., as should be living at the time of her decease, and should live to attain the age of twenty-one years; and if more than one, in equal shares.

(*g*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante.*

(*h*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*) to No. 1997 *ante.*

(*j*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante.*

(*k*) See note (*a*) at p. 1082, *supra.* For the practice as to petitions, see *ante* No. 1578, and note (*j*). As to the persons who should be served with the petition, see Dan. Pr. 1649; as to the evidence in support, see *Ibid.*, 1650. As to the papers to be left with the Registrar on bespeaking the order, see Dan. Pr. 1657. As to the mode of making a payment out of Court, see Chancery Funds Cons. Rules, 1874, rules 38, 41; note (*b*) to No. 2030 *ante*; and where the money has been placed on deposit; Chancery Funds Cons. Rules, 1874, 50; note (*b*) to No. 2030 *ante.* As to the mode of making a transfer out, see Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 10; Chancery Funds Cons. Rules, 1874, rules 42, 45; note (*q*) to No. 2037 *ante.* As to dividends accruing on the securities subsequently to the order and before the transfer, see Chancery Funds Cons. Rules, 1874, rules 46, 47, 49; note (*q*) to No. 2037 *ante.*

2. By the judgment made on the hearing of this cause, dated the —— of ——, 187—, the trusts of the said will were directed to be carried into execution ; and the usual accounts and inquiries were directed to be taken and made as to the estate of the said testator; and an inquiry was thereby also directed as to the children of the said N. B.

3. By the certificate of R. M., esquire, the Chief Clerk of the Master of the Rolls [*Or*, of the Vice-Chancellor Sir ——], dated the —— of ——, 187—, and filed on the —— of ——, 187, he found, amongst other things, that the said N. B. had one child then living by her husband, the said J. B. ; namely, your petitioner A. B. who was born on the —— of ——, 18—.

4. By an order dated the —— of ——, 187—, made on the hearing of this cause on further consideration, £11,600 Consolidated £3 per cent. annuities : which then represented the said legacy of £12,000 like annuities, after raising and paying thereout the legacy duty payable in respect thereof, and which has been duly paid (*l*) : were directed to be carried over to the credit of this cause, A. *v.* B., 1876, A. 100, "The account of N. B., the wife of J. B., and her children by him," and the dividends as they accrued thereon, during the life of the said N. B., were directed to be paid to her, for her separate use, until further order.

5. Pursuant to the said order, the said N. B. received the dividends as they accrued on the said fund, down to the —— of ——, 187—.

6. The said N. B. died on the —— of ——, 187— : leaving your petitioner A. B., her only child her surviving. Your petitioner attained his age of twenty-one years on the —— of ——, 187—.

7. There is now in Court to the credit of this cause, A. *v.* B., 1876, A. 100, "The account of N. B., the wife of J. B., and her children by him," the said £11,600 Consolidated £3 per cent. annuities, and £171 cash. The said cash represents the half-year's dividends which accrued on the said annuities on the —— of ——, 187— : whereof the sum of £71 is the proportion of such dividends which accrued between the said —— of ——, 187—, the last period of payment to the said N. B., and the day of her death ; and which proportion is payable to the said J. B., as the legal personal representative of the said N. B., by virtue of letters of administration of her effects granted to him by the Principal Registry of the Probate Division of Her Majesty's High Court of Justice, on the —— day of ——, 187— [*Or*, is

(*l*) Every petition for dealing with money or securities in Court chargeable with legacy or succession duty, or the dividends on such securities, must contain a statement whether the duty or any part thereof has or has not been paid ; Chancery Funds Amended Orders, 1874, rule 11 ; and see Chancery Funds Cons. Rules, 1874, rules 14, 57.

payable to the legal personal representative of the said N. B. when constituted (*o*)].

8. Under the circumstances aforesaid your petitioner claims to be entitled to the said £11,600 Consolidated £3 per cent. annuities, and to the sum of £100, residue of the said £171 cash.

Your petitioner therefore humbly prays:

1. That out of the said sum of £171 cash in Court to the credit aforesaid, the sum of £71 cash may be paid to the said J. B. as the legal personal representative of the said N. B. [*Or*, to the legal personal representative of the said N. B. when constituted (*o*)].
2. That it may be referred to the Taxing Master to tax the petitioner's costs of this application as between solicitor and client, and that such costs, when taxed, may be paid out of the sum of £100 cash, which will remain in Court to the credit aforesaid, after making the payment out hereinbefore mentioned.
3. That the residue of the said cash, and also the said £11,600 Consolidated £3 per cent. annuities in Court to the credit aforesaid, may be respectively paid and transferred to your petitioner A. B. (*p*).

Or that [*Conclude as in* No. 1578 *ante, and add foot note,* No. 1579].

(*o*) As to payment to representatives, see Chancery Funds Cons. Rules, 1874, rules 12, 53, 54, 56; notes (*e*), (*f*), (*g*), to No. 2030 *ante*.

(*p*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante*.

2043. Summons for delivery out of securities passing by delivery (*r*).

Formal parts: see ante No. 881.

on the part of [*State whom*], that the [*Here describe the securities* (*s*), *as thus:* Exchequer Bills] in Court to the credit of this cause, B. *v.* D., 1876, B. 100, "The account of, *&c.*" (*t*), amounting together to £200, and specified in the schedule hereto (*u*)

[*If the securities are Exchequer Bills, add:*] or any other Exchequer Bills for which the same may be exchanged,

may be delivered out to (the applicant) A. B. [*or as may be; see ante* No. 2030 (*v*)].

Schedule.

[*Same as schedule to* No. 1977 *or* No. 1978 *ante.*]

(*r*) See note (*a*) at p. 1082, *supra*. As to the persons who should be served with the petition or summons, see Dan. Pr. 1649; as to the evidence in support, see *Ibid.*, 1650. As to the papers to be left with the Registrar on bespeaking the order, see *Ibid.*, 1657. For order in like case, see Seton, ed. 4, 98. In order to obtain a delivery out of Court, the certificate of a Registrar of the Court is necessary; Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 10; for the purpose of obtaining this certificate, the order or an office copy thereof must be produced to the Registrar; Chancery Funds Cons. Rules, 1874, rule 42; as to the contents of the certificate, see *Ibid.*, rule 42; for form of certificate, see *post* No. 2059. The order and certificate must then be left with the Chancery Paymaster, who will issue a direction for the delivery out; Chancery Funds Cons. Rules, 1874, rule 45; as to the contents of the direction, see *Ibid.*, rule 45. This direction and the Registrar's certificate, countersigned by the Chancery Paymaster, must be lodged at the bank, and thereupon the delivery out will be made by the proper officer of the bank; Chancery Funds Cons. Rules, 1874, rule 45. The bank will return the direction to the Chancery Pay Office with a certificate of delivery thereon; *Ibid.*, rule 45. If subsequently to the date of the order, dividends have accrued on the securities directed to be delivered out, such dividends will be paid to the persons to whom the securities are to be delivered; Chancery Funds Cons. Rules, 1874, rule 46; or if such dividends have been invested, the securities purchased therewith will be transferred or delivered to such persons; *Ibid.*, rule 47; upon a certificate of investment, the Registrar will issue his certificate for transfer or delivery; *Ibid.*, rule 49; for form of certificate, see *post* No. 2060.

(*s*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante.*

(*t*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante.*

(*u*) See Chancery Funds Cons. Rules, 1874, rule 9; note (*h*) to No. 1997 *ante.*

(*v*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante.*

2044. Summons for delivery out of box deposited in Court (*w*).

Formal parts: see ante No. 881.
on the part of [*State whom*], that the box indorsed "In the High Court of Justice Chancery Division, B. *v.* D., 1876, B. 100, The account of, *&c.*, Securities" [*or as may be*], in Court to the credit of this cause, B. *v.* D., 1876, B. 100, "The account of, *&c.*" (*x*), may be delivered out to (the applicant) A. B. [*or as may be; see ante* No. 2030 (*y*)].

2045. Summons to substitute the name of one person, for that of another as payee, &c. (*a*).

Formal parts: see ante No. 881.
on the part of C. D., of [*residence and addition*], that the sum of £1,000 cash [*Or*, the £1,000 Consolidated £3 per cent. annuities; *or as may be*]
[*If the sum dealt with is part of a larger sum, add:*] part of the sum of £10,000 cash [*Or*, of the £10,000 like annuities; *or as may be*]
in Court to the credit of this cause, B. *v.* D., 1876, B. 100, "The account of, *&c.*," by the order dated the —— day of ——, 187—, directed to be paid [*Or*, transferred; *Or*, delivered] to A. B., may instead thereof be paid [*Or*, transferred; *Or*, delivered] to the applicant A. B. [*or as may be; see ante* No. 2030 (*b*)].

2046. Another form (*c*).

Formal parts: see ante No. 881.
on the part of C. D., of [*residence and addition*], that, notwithstanding the order dated the —— day of ——, 187—, the [*Continue as in* No. 2045 *ante, to the end, substituting the word* "thereby" *for the words* "by the order dated, *&c.*"]

(*w*) See note (*r*) to No. 2043 *ante*; as to the mode in which a delivery out will be made, see *Ibid.*

(*x*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante*.

(*y*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante*.

(*a*) Where an order merely substitutes the name of one person for that of another to whom a payment, transfer, or delivery of money or securities has been directed by a former order, it is not necessary to express in the second order the amount of the money or securities dealt with; Chancery Funds Cons. Rules, 1874, rule 8; but the title of the cause or matter and separate account, if any, to the credit of which the money or securities dealt with are standing must be stated in the order; *Ibid.*, rule 7.

(*b*) See notes (*e*), (*f*), (*g*), (*h*), (*j*), (*k*), to No. 2030 *ante*.

(*c*) See note (*a*) to No. 2045 *ante*. For order in like case, see Seton, ed. 4, 99.

2047.

Affidavit or statutory declaration of amount of residue of a fund: to be dealt with by the Registrar, or Paymaster-General (*e*).

Formal parts: see ante No. 693 *or* No. 1987.

1. The residue of the [*Describe what: according to the order; as thus:*]

sum of £——, Consolidated £3 per cent. annuities, in the order dated the —— day of ——, 187—, mentioned, after the sale of so much thereof as, with the cash in Court to the credit of this cause, was sufficient to raise the sum of £——,

amounts to the sum of £——, and no more.

2048.

Affidavit for payment, &c., to personal representatives of person named in order (*f*).

Formal parts: see ante No. 693.

1. I was well acquainted with A. B., deceased, the person named in the order dated, *&c.*, and late of, *&c.* [*Follow description in probate or administration*].

2. Probate of the will [*Or*, Letters of administration of the effects] of the said A. B., was [*Or*, were] granted by the Principal Registry of the Probate Division of the High Court of Justice, on the —— day of —— (*g*), to C. D. and E. F.: which probate [*Or*, letters of administration], marked X. (*h*), is [*Or*, are] now produced and shown to me.

3. The said A. B. is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

2049.

Affidavit for payment, &c., to survivors or survivor of personal representatives named in order (*j*).

Formal parts: see ante No. 693.

1. I was well acquainted with A. B., deceased, the person named in the order dated the —— day of ——, 187—, as one of the legal personal representatives of C. D., deceased.

2. The said A. B. is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

(*e*) See Chancery Funds Cons. Rules, 1874, rules 8, 86; note (*c*) to No. 2030 *ante*.

(*f*) See Chancery Funds Cons. Rules, 1874, rule 53; note (*e*) to No. 2030 *ante*. For certificate of Registrar for transfer or delivery in like case, see *post* No. 2061.

(*g*) See Chancery Funds Cons. Rules, 1874, rule 56; note (*e*) to No. 2030 *ante*.

(*h*) Exhibit same; for form of memorandum of exhibit, see *ante* No. 723.

(*j*) See Chancery Funds Cons. Rules, 1874, rule 54; note (*f*) to No. 2030 *ante*.

2050. The like, where representatives not named in order (*k*).

Formal parts : see ante No. 693.

1. I was well acquainted with A. B., deceased, and he was the person to whom the probate of the will [*Or*, letters of administration of the effects] of C. D., deceased, the person named in the order dated the —— day of ——, was [*Or*, were] granted by the Principal Registry of the Probate Division of the High Court of Justice, on the —— day of —— (*l*), jointly with E. F. and G. H. : which probate [*Or*, letters of administration], marked H. (*m*), is [*Or*, are] now produced and shown to me.

2. The said A. B., is also the person named in the certificate of burial [*Or*, official extract from the register of deaths] hereunto annexed.

2051. Affidavit by husband and wife, for payment, transfer or delivery to them of a fund not exceeding £200, directed before their marriage, to be paid, transferred or delivered to her : where there is no settlement or agreement whatever (*n*).

In the High Court of Justice,
Chancery Division.

[*Title of the cause or matter, and reference to the record.*]

We, A. B., of [*residence and addition*], and C. his wife, severally make oath and say, as follows :

1. This deponent C. B. is the same person as C. D., in the order made in this cause [*Or*, matter] dated the —— day of ——, 187—, named, and to whom the [*State what : as in the order*] are thereby directed to be paid [*Or*, transferred ; *Or*, delivered].

2. [*Prove the marriage : see post* No. 2073, *paragraph* 3.]

3. No settlement or agreement for a settlement whatsoever was made or entered into before or upon, or has been made or entered into since our said marriage.

4. The said [*State what*] have not respectively yet been paid [*Or*, transferred ; *Or*, delivered], pursuant to the said order.

5. Under the circumstances aforesaid we are desirous to have the said [*State what*] paid [*Or*, transferred ; *Or*, delivered] to us, pursuant to the said order and the 52nd of the Chancery Funds Consolidated Rules, 1874.

(*k*) See Chancery Funds Cons. Rules, 1874, rule 54 ; note (*g*) to No. 2030 *ante*.

(*l*) See Chancery Funds Cons. Rules, 1874, rule 56 ; note (*e*) to No. 2030 *ante*.

(*m*) Exhibit same ; for form of memorandum of exhibit, see *ante* No. 723.

(*n*) See Chancery Funds Cons. Rules, 1874, rule 52 ; note (*j*) to No. 2030 *ante*.

2052.

The like, where there is a settlement or agreement, but not affecting the fund (*o*).

In the High Court of Justice,

Chancery Division.

[*Title of the cause or matter, and reference to the record.*]

We, A. B., of [*residence and addition*], and C. his wife, and E. F., of [*place of business*], gentleman, the solicitor of the said A. B. and C. his wife, severally make oath and say, as follows:

And first, we the said A. B. and C. his wife, for ourselves, say:

1. This deponent [*Proceed as in* No. 2051 *ante, to the end of paragraph* 3; *and continue as follows*]: other than and except the settlement [*Or,* agreement for a settlement], now produced and shown to us, and marked D. (*p*), and dated the —— day of ——, 187—.

4. The said [*Continue as in paragraph* 4, *of* No. 2051 *ante, to the end of paragraph* 5].

And I, the said E. F., for myself, say:

6. I have carefully perused the said settlement [*Or,* agreement for a settlement] dated the —— day of ——, 187—, and which is also now produced and shown to me, and marked D. (*p*); and, according to the best of my judgment, the [*Describe the moneys, stocks, funds, shares or securities sought to be paid, transferred, or delivered out; and the cause, or matter, and account to which they stand*] are not, nor is, nor are any part or parts thereof, subject to the trusts of the said settlement [*Or,* agreement for a settlement], or in any manner comprised therein, or affected thereby.

2053.

Requisition from official person for transfer of cash to his account at the Bank of England (*q*).

Chancery.

To the Paymaster-General.

[*Place of business.*]

—— day of —— [*Date*].

I, A. B., of ——, the official liquidator of the —— Company, Limited [*or as may be*], hereby request that the sum of £——, payable to me as such liquidator as aforesaid [*or as may be*], out of cash in Court to the credit of [*State the title of the cause or matter, and account in the books at the Paymaster-General's office to the credit of which the cash is standing*], may be transferred to my account at the Bank of England, entitled [*State the title of the official person's cash account in the bank books*] pursuant to an order dated ——.

A. B.

[*Signature of the official person.*]

(*o*) See Chancery Funds Cons. Rules, 1874, rule 52; note (*j*) to No. 2030 *ante*.

(*p*) Exhibit same; for form of memorandum of exhibit, see *ante* No. 723.

(*q*) See Chancery Funds Cons. Rules, 1874, rule 41; note (*b*) to No. 2030 *ante*.

2054. Request to withdraw money from deposit in order to act on an order (*r*).

Chancery.

To the Paymaster-General.

I request that the sum of £—— (part of the) **money on deposit** to the credit of [*State credit and separate account (if any) to which the money is standing*], may be **withdrawn** from deposit to satisfy the requirements of the order dated ——.

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party; as in* No. 92 *ante.*]

2055. Registrar's certificate for sale of securities (*s*).

High Court of Justice,

Chancery Division.

To the Paymaster-General.

[*Short title of cause or matter, and reference to record.*

Pursuant to the order dated ——, 187—, the £500 Consolidated £3 per cent. annuities [*or as may be*] in Court to the credit of [*Short title of cause or matter, and reference to record; as thus:*] A. *v.* B., 1876, A. 100 [*Add separate account (if any)*] are to be sold.

2056. Registrar's certificate for sale to raise specified sum (*s*).

High Court of Justice,

Chancery Division.

To the Paymaster-General.

[*Short title of cause or matter, and reference to record.*]

Pursuant to the order dated ——, and the Taxing Master's certificate dated ——, so much of —— Consolidated £3 per cent.

(*r*) See Chancery Funds Cons. Rules, 1874, rules 74, 75; note (*u*) to No. 2033 *ante*. As to the request, see Chancery Funds Cons. Rules, rule 93; note (*b*) to No. 1962 *ante*.

(*s*) The certificate of a Registrar is a necessary authority for the purpose of making any sale, transfer, or delivery out of securities in Court; Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), s. 10; for the purpose of obtaining the certificate, the original order, or (if the absence of the original order be satisfactorily accounted for) an office copy thereof must be produced to the Registrar; Chancery Funds Cons. Rules, 1874, rule 42; the certificate must express the exact amount of money to be raised by sale, or the exact amount and description of securities to be sold, transferred, and delivered out; *Ibid.*, rule 42. The Registrars cannot, without a special direction of a Judge, be required to issue certificates for sale, transfer, or delivery of securities in vacation; Chancery Funds Amended Orders, rule 12. As to the mode of making a sale of securities in Court, see Chancery Funds Cons. Rules, 1874, rule 43; note (*ff*) to No. 2035 *ante*.

annuities [*or as may be*] in Court to the credit of [*Short title of cause or matter, and reference to record; as thus:*] A. *v.* B., 1876, A. 100 [*add separate account (if any)*], as will raise one thousand pounds, is to be sold.

2057.

Certificate for sale where dividends have been invested (*t*).

High Court of Justice,
Chancery Division.
To the Paymaster-General.
[*Short title of cause or matter, and reference to record.*]

Pursuant to the order dated ——, the 48th of the Chancery Funds Consolidated Rules, 1874, and the certificates of investment and of the fund, £500 Consolidated £3 per cent. annuities in Court to the credit of [*State title of cause or matter, and separate account (if any)*], and £10 like annuities in Court to the same credit, are to be sold.

2058.

Registrar's certificate for transfer out of securities (*u*).

High Court of Justice,
Chancery Division.
To the Paymaster-General.
[*Short title of cause or matter, and reference to record.*]

Pursuant to the order dated ——, 187—, —— Consolidated £3 per cent. annuities [*or as may be*] in Court to the credit of [*Short title of cause or matter, and reference to record; as thus:*] A. *v.* B., 1876, A. 100 [*Add separate account (if any)*], are to be transferred to the plaintiff A. [*Or*, defendant B.; *Or*, D. in the said order named; *or as may be: as in order*].

Transfer to A. B., of [*address and description of person to whom transfer is to be made (v)*].

X. Y., of [*address*], solicitor for [*State whom*].

(*t*) See Chancery Funds Cons. Rules, 1874, rules 46, 48, 49; note (*k*) to No. 2036 *ante*. As to the certificate, see note (*s*) to No. 2055 *ante*.

(*u*) See note (*s*) to No. 2055 *ante*. As to the mode of making a transfer out of Court, see Chancery Funds Cons. Rules, rule 45; note (*q*) to No. 2037 *ante*.

(*v*) The solicitor having the conduct of the proceedings must sign, at the foot of the certificate, a memorandum stating the name, address, and description of the person into whose name the securities are to be transferred; Dan. Pr. 1666.

2059. Registrar's certificate for delivery out of securities (*w*).

High Court of Justice,
Chancery Division.
To the Paymaster-General.
[*Short title of cause or matter, and reference to record.*]
Pursuant to an order dated ——, 187—, the following [*Describe the securities, as thus:* Exchequer Bills] in Court to the credit of [*Short title of cause and reference to record; as thus:*] A. *v.* B., 1876, A. 100 [*Add separate account (if any)*], viz. [*Specify the number and amount of the securities, as thus:* Nos. 375 and 395 for £100 each, all dated, &c., &c., Nos. 400 and 500 for £200 each, all dated, &c., amounting together to six hundred pounds], are to be delivered out to the plaintiff A. [*Or,* defendant C. D.; *Or,* E. F. in the said order named; *or as may be: as in order*].

2060. Certificate for transfer or delivery out, where dividends have been invested (*x*).

High Court of Justice,
Chancery Division.
To the Paymaster-General.
[*Title of cause or matter, and reference to the record.*]
Pursuant to the order dated ——, the 47th of the Chancery Funds Consolidated Rules, 1874, and the certificates of investment and of the fund, the [*Describe the securities; as thus:*] £2,000 Consolidated £3 per cent. annuities in Court to the credit of [*&c., as in* No. 2058 *ante*], and £30 like annuities [*or as may be*] in Court to the same credit, are to be transferred [*Or,* delivered out] to the plaintiff A. [*or as may be: as in order*].
Transfer to [*&c., see ante* No. 2058 (*y*)].

2061. Certificate for transfer or delivery to representatives of a deceased person (*z*).

High Court of Justice,
Chancery Division.
To the Paymaster-General.
[*Short title of cause or matter, and reference to record.*]
Pursuant to order dated ——, the 53rd and 55th of the Chancery Funds Consolidated Rules, 1874, an affidavit of —— filed the —— day of ——, 187—, the certificate of the burial of A. in the said order named, and the probate of the will [*Or,* letters

(*w*) See note (*s*) to No. 2055 *ante*. As to the mode of making a delivery out of Court, see Chancery Funds Cons. Rules, rule 45; note (*r*) to No. 2043 *ante*.

(*x*) See Chancery Funds Cons. Rules, 1874, rules 46, 47, 49; note (*q*) to No. 2037 *ante*; and note (*r*) to No. 2043 *ante*. As to the certificate, see note (*s*) to No. 2055 *ante*.

(*y*) See note (*v*) to No. 2058 *ante*.

(*z*) See Chancery Funds Cons. Rules, 1874, rules 53, 55; note (*e*) to No. 2030 *ante*; and No. 2048 *ante*. As to the certificate, see note (*s*) to No. 2055 *ante*.

of administration of the effects] of the said A. granted on the —— day of ——, 187—, to B. and C. by the Principal Registry of the Probate Division of the High Court of Justice, £—— Consolidated £3 per cent. annuities [*or as may be; describe the securities*] in Court to the credit of [*&c., as in* No. 2058 *ante*] are to be transferred [*Or*, delivered out] to the said B. and C.

Transfer to B., of [*address and description*], and C., of [*address and description* (*a*)].

2062.

Registrar's certificate for delivery out of effects (*b*).

Chancery.

To the Paymaster-General.

[*Short title of cause or matter, and reference to record.*]

Pursuant to the order dated ——, the box indorsed [*State indorsement of the box; as thus:*] "A. *v.* B., 1876, A. 100, Securities" in Court to the credit of [*Short title of cause or matter, and reference to record; as thus:*] A. *v.* B., 1876, A. 100 [*Add separate account (if any)*], is to be delivered out (within fifteen days after the —— day of January, 187—) to the plaintiff A. [*Or*, defendant B.; *Or*, D. in the said order named; *or as may be: as in order*].

2063.

Request for Paymaster-General's certificate of sale of securities (*c*).

—— day of ——, 187—.

Chancery.

To the Paymaster-General.

A certificate of sale on the —— day of ——, 187—, of £—— Consolidated £3 per cent. annuities [*or as may be*], then standing to the credit of [*Title of cause or matter, and account, if any*], is requested for the use of [*State for what purpose the certificate is required*].

[*Name and address of solicitor or party, as* No. 92 *ante.*]

(*a*) See note (*v*) to No. 2058 *ante.*

(*b*) See note (*s*) to No. 2055 *ante.* As to the mode of making a delivery out, see Chancery Funds Cons. Rules, 1874, rule 45; note (*r*) to No. 2043 *ante.*

(*c*) See Chancery Funds Cons. Rules, 1874, rule 89; note (*b*) to No. 1962 *ante.* As to the request, see Chancery Funds Cons. Rules, 1874, rule 93; note (*b*) to No. 1962 *ante.*

2064. Paymaster-General's certificate of sale of securities (

Chancery.

Chancery Pay Office,
—— day of ——, 187—.

At the request of Mr. ——, solicitor for the ——, I hereby certify that on the —— day of ——, the sum of £—— Consolidated £3 per cent. Annuities [*or as may be*] having been sold was transferred from the credit of [*Title of cause or matter, and account (if any)*], and that the proceeds of the sale, amounting to the sum of £——, have been placed to the same credit pursuant to an order dated ——.

2065. Request for Paymaster-General's certificate of transfer out (*d*).

—— day of ——, 187—.

Chancery.

To the Paymaster-General.

A certificate of the transfer out of Court on the —— day of ——, of £—— Consolidated £3 per cent. Annuities [*or as may be*] from the credit of [*State the title of cause or matter and account, if any, from which the securities were transferred*] to [*Name the person to whom the transfer was made*] is requested for the use of [*State for what purpose the certificate is required*].

[*Name and address of solicitor or party, as in* No. 92 *ante.*]

2066. Paymaster-General's certificate of transfer out (*d*).

Chancery.

Chancery Pay Office,
—— day of ——, 187—.

At the request of Mr. ——, solicitor for the ——, I hereby certify that on the —— day of —— the sum of £—— Consolidated £3 per cent. Annuities [*or as may be*] then placed to the credit of [*Title of cause or matter and account, if any, from which the securities were transferred*], was transferred to [*The person to whom the transfer was made*] pursuant to an order dated ——.

2067. Request for Paymaster-General's certificate of delivery out of securities (*d*).

—— day of ——, 187—.

Chancery.

To the Paymaster-General.

A certificate of the delivery out of Court on the —— day of ——, 187—, of [*State the number and description of the securities*

(*d*) See Chancery Funds Cons. Rules, 1874, rule 89 ; note (*b*) to No. 1962 *ante*. As to the request, see Chan. Funds Cons. Rules, 1874, rule 93 ; note (*b*) to No. 1962 *ante*.

delivered out], then placed to the credit of [*State the title of the cause or matter and the separate account (if any)*] to [*State the name of the person to whom the securities were delivered*], is requested for the use of [*State for what purpose the certificate is required*].

[*Name and address of solicitor or party, as in* No. 92 *ante.*]

2068. Paymaster-General's certificate of delivery out of securities (*h*).

Chancery.

Chancery Pay Office,
—— day of ——, 187—.

At the request of Mr. ——, solicitor for the ——, I hereby certify that on the —— day of ——, the following [*State the number, date, and description of securities, as thus:* Exchequer Bills], that is to say, No. ——, for £——, dated ——, and No. ——, for £——, dated ——, amounting together to £——, then placed to the credit of [*The title of the cause or matter and account (if any)*] were delivered to [*Name of the person to whom the securities were delivered*] pursuant to an order dated ——.

2069. Request for power of attorney to receive cheque (*j*).

[*Proceed as in* No. 2024 *ante, down to* known to me; *and continue thus:*] to receive your cheque on the Bank of England for the sum of £—— out of cash in Court on the credit of [*Short title of cause or matter and account, if any*].

Dated —— day of ——, 187—.

B. W. S.

[*Or,* B. W. S. for S. and C.]

2070. Notice to creditors that cheques may be received (*m*).

Formal parts: see ante No. 21.

The cheques for the amounts directed to be paid to the creditors of A. B. deceased, by an order made in this (matter and) cause dated the —— day of ——, 187—, may be received at the Chancery Pay Office on and after the —— day of ——, 187—.

(*h*) See Chan. Funds Cons. Rules, 1874, rule 89; note (*b*) to No. 1962 *ante.*

(*j*) See note (*b*) to No. 2024 *ante.*

(*m*) Ord. 27 May, 1865, rule 12, and Sched. 2, No. 7; Dan. Pr. 1661. The notice may be sent by the post prepaid; Ord. 27 May, 1865, rule 13.

2071. Petition of husband and wife for sale of fund in Court and payment of costs and duty, and payment of residue to husband (*n*).

Formal parts : see ante No. 1578.

The humble petition of A. B., of [*residence and addition*], and C., his wife.

Showeth as follows :

1. [*Show how the account has been raised ; as thus :*] Pursuant to an order dated the —— day of ——, 187—, £—— Consolidated £3 per cent. annuities, and £—— cash, were carried over to the credit of this cause [*Or*, matter], B. *v.* D., 1876, B. 100 [*or as may be*], "The account of C. D., an infant, subject to duty" ; and such cash was afterwards invested in the purchase of £—— like annuities ; and the dividends which have since accrued on the said annuities have been from time to time laid out in like annuities, and accumulated.

2. [*Show the present state of the fund ; as thus :*] The said annuities, cash, and dividends are now represented by £—— Consolidated £3 per cent. annuities, and £—— money on deposit, respectively in Court to the credit aforesaid.

3. [*Show the identity, marriage, and majority of the wife ; as thus :*] Your petitioner C. B. is the same person as C. D., in the said order named. On the —— of ——, 187—, your petitioner C. B. attained her age of twenty-one years ; and on the —— of ——, 187—, your petitioners intermarried.

4. [*State whether there is or is not a settlement ; as thus :*] No settlement or agreement for a settlement whatsoever was made or entered into before or upon, or has been made or entered into since, the marriage aforesaid of your petitioners.

[*Or, if there is a settlement or agreement, add, if so :*] other than a certain settlement [*Or*, agreement] dated the —— of ——, 187—; but which does not affect the said annuities and money on deposit, or any portion thereof.

5. The legacy [*Or*, succession] duty payable in respect of the said fund [*or as may be*] has not, nor has any part thereof, been paid (*q*).

(*n*) See note (*a*) at p. 1082, *supra*. For the practice as to petitions, see *ante* No. 1578 and note (*j*). As to the persons who should be served with the petition, see Dan. Pr. 1649 ; as to the evidence in support, see *Ibid.*, 1650. As to the papers to be left with the Registrar on bespeaking the order, see Dan. Pr. 1657. As to the mode of withdrawing the money from deposit, see Chancery Funds Cons. Rules, 1874, rules 74, 75 ; note (*u*) to No. 2033 *ante*. As to the mode of effecting a sale of securities in Court, see Chancery Funds Cons. Rules, 1874, rules 42, 43 ; note (*ff*) to No. 2035 *ante*. As to the mode of obtaining a payment out of Court, see Chancery Funds Cons. Rules, 1874, rules 38, 41 ; note (*b*) to No. 2030 *ante*. As to dividends accruing on the securities subsequently to the order and before the sale, see Chancery Funds Cons. Rules, 1874, rules, 46, 48, 49 ; note (*k*) to No. 2036 *ante*.

(*q*) See Chancery Funds Amended Orders, 1874, rule 11 ; note (*l*) to No. 2041 *ante*.

Your petitioners therefore humbly pray as follows:

1. That the said £—— Consolidated £3 per cent. annuities may be sold.
2. That it may be referred to the Taxing Master to tax your petitioners' costs of this application as between solicitor and client.
3. That out of the proceeds of such sale and the said money on deposit, and any interest to be credited in respect thereof, the said costs when taxed may be paid to your petitioners' solicitors; and the sum of £——, being the assessed amount [*If the amount is not yet ascertained, say:* the assessed amount to be verified by affidavit] of legacy [*Or,* succession] duty payable in respect of the said fund, may, upon the requisition of the Commissioners of Inland Revenue, be transferred to the account of the Receiver-General of Inland Revenue at the Bank of England (*s*).
4. That the residue of the said proceeds, money on deposit, and interest, may be paid to your petitioner A. B., in right of your petitioner C., his wife.

Or that [*Conclude as in* No. 1578 *ante; and add foot note* No. 1579].

2072. Summons by husband and wife for like purpose (*t*).

Formal parts: see ante No. 881.

on the part of A. B., of [*residence and addition*], and C., his wife, late, and in the order dated the —— of ——, 187—, described as, C. D., an infant:

1. That the £—— Consolidated £3 per cent. annuities (*u*) in Court to the credit of this cause [*Or,* matter], B. *v.* D., 1876, B. 100 [*or as may be*], "The account of C. D., an infant, subject to duty" (*v*) may be sold.

2. That the costs of this application, as between solicitor and client, may be taxed: or ascertained at Chambers.

3. That out of the proceeds of such sale, and the £——, money on deposit in Court to the like credit, and any interest to be credited [*&c.: as in clause* 3 *of prayer of* No. 2071 *ante*].

[4. That

(*s*) See note (*n*) to No. 2036 *ante.*

(*t*) See note (*a*) at p. 1082 *supra.*

(*u*) See Chancery Funds Cons. Rules, 1874, rule 8; note (*c*) to No. 2030 *ante.*

(*v*) See Chancery Funds Cons. Rules, 1874, rule 7; note (*d*) to No. 2030 *ante.*

4. That the residue of such proceeds, money on deposit, and interest may be paid to the applicant A. B., in right of the applicant C., his wife.

2073. Affidavit in support of petition or summons (o)

In the High Court of Justice,
Chancery Division.

[*Title and reference to the record.*]

We, E. F., of [*place of business*], gentleman, and A. B., of [*residence and addition; as in petition or summons*], and C., his wife, severally make oath and say, as follows:

And first, I the said E. F., for myself, say:

1. I am the solicitor for the said deponents A. B. and C. his wife, in the matter of the application made by them by petition presented [*Or*, by summons taken out] on the —— of ——, 187—, in this cause [*Or*, matter]; and I am well acquainted with the said A. B. and C. his wife [*or as may be*].

2. The said C. B. is the same person as "C. D., an infant," in the order in this cause [*Or*, matter] dated the —— of ——, 187—, named; and she is also the same person as "C., daughter of H. and L. D.," named in the paper writing now produced and shown to me, and marked A. (*p*), and purporting to be a certified copy of an entry in the register book of baptisms kept for the parish of M., for the year 18— [*or as may be: see ante* No. 1220, *paragraph* 3].

And we the said A. B. and C. his wife, for ourselves say, as follows:

3. On the —— of ——, 187—, we intermarried at the parish church of W., in the county of Y.; and we are the same persons as A. B. and C. D., respectively named in the paper writing now produced and shown to us, and marked B. (*p*), and purporting to be a certified copy of an entry in the register book of marriages kept for the said parish of W., for the year 187— [*or as may be*].

4. No settlement or agreement for a settlement whatsoever was made or entered into before or upon, or has been made or entered into since, our said marriage.

[*If so:*] other than and except the settlement [*Or*, agreement for a settlement] now produced and shown to us, and marked D. (*p*), and dated the —— of ——, 187— (*q*).

[*If there is a settlement, or agreement for a settlement, add, where the application is made by summons* (*r*):]

(*o*) See Dan. Pr. 90, 93. As to proof of the marriage, see *Ibid.*, 93.

(*p*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*q*) As to an affidavit of no settlement, see Dan. Pr. 90; and as to dispensing with it, see *Ibid.*, 90, note (*g*), 91.

(*r*) See Dan. Pr. 90.

And I the said E. F., for myself further say:

5. I have carefully perused the said settlement [*Or*, agreement for a settlement] dated the —— of ——, 187—, and which is also now produced and shown to me, and marked D. (*p*); and, according to the best of my judgment, the [*Describe the funds proposed to be dealt with; as in the Paymaster-General's voluntary certificate*], are not, nor is, nor are, any part or parts thereof, subject to the trusts of the said settlement [*Or*, agreement for a settlement], or in any manner comprised therein, or affected thereby.

2074. Summons to appoint commissioners to take a married woman's examination as to the disposition of a fund in Court (*t*).

Formal parts: see ante No. 881.

on the part of A. B., of [*residence and addition*], and C. his wife, late, and in the order dated the —— day of ——, 187—, called, C. D., an infant [*or as may be*]: that the said C., the wife of the said A. B., may attend before E. F., G. H., J. K., and L. M., all of the city of York [*or as may be*], solicitors of the Supreme Court, or any two of them, and be examined secretly and apart from her said husband, whether she desires to have the [*Describe the fund: as thus:*] £1,000 Consolidated £3 per cent. annuities in Court to the credit of [*&c., as in* No. 2071 *or* 2072 *ante*], or any and what part thereof, settled for the benefit of herself, her husband and children, in such manner as the Court shall approve, or whether she desires that the said £1,000 Consolidated £3 per cent. annuities [*or as may be*], or any and what part thereof, should be transferred [*or as may be*] to the said A. B., her husband.

2075. Examination of a married woman by commissioners (*v*).

In the High Court of Justice,
Chancery Division.
[*Title, as in order directing the examination.*]

The examination of C., the wife of A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 187— [*Order directing the examination*], respectively named: taken pursuant to the said order.

I., the said C. B., the wife of the said A. B., having been this day

(*p*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*t*) See Dan. Pr. 88, 93. For the practice as to the appointment of, and ex-examination by, commissioners, see Dan. Pr. 87—90. The examination of the wife cannot be taken where she is not of full age: *Ibid.*, 91. As to when her examination will be dispensed with, see *Ibid.*, 92, 94. For order for payment of fund to husband, on separate examination of the wife by the Judge in person, see *Potter* v. *Roker*, V.-C. J. at Chambers, 1 July, 1870, Reg. Lib. B. 1793.

(*v*) See Dan. Pr. 89. The examination should be written on the first side of a sheet of foolscap; and the commissioner's certificate (*post* No. 2076) should follow thereunder. As to revocation of consent by the wife, see Dan. Pr. 92. As to paying the fund to the wife, on her separate receipt, without examination, see *Ibid.*; and note (*k*) to No. 2030 *ante*.

examined, secretly and apart from my said husband (*x*), by E. F. and G. H., in the said order respectively named, whether (*y*) I desire to have the [*Describe the funds, as in the order directing the examination*], or any and what part thereof, settled for the benefit of myself, my husband and children, in such manner as the Court shall approve, or whether I desire the said [*Describe the funds, as above*], or any and what part thereof, to be transferred [*or as may be*] to the said A. B., my husband, for answer thereto say that I am willing and desirous that [*Here state the result of the examination; as thus:*]

the said [*Describe the fund or part of it which the woman desires to have settled*] should be settled for the benefit of myself, my husband and children, in such manner as this Court or any Judge thereof shall approve. *Or,*

the said [*Describe the fund which the woman is willing should be paid or transferred to the husband*] should be transferred [*Or,* paid; *or as may be*] to my husband the said A. B.

[*If to be transferred and paid to husband, add:*] And I hereby freely and voluntarily consent to the said sums being transferred and paid to my said husband, accordingly. As witness my hand, this —— day of ——, 187—.

C. B.

Witness to the signature of the said C. B.,
X. Y., of [*residence and addition*].

B.

2076. Certificate of examination (*z*).

To Her Majesty's High Court of Justice.

We, the undersigned E. F. and G. H.: being two of the commissioners named in the order dated the —— day of ——, 187—, above mentioned: humbly certify that, pursuant to the said order, we have this day examined the above-named C. B., the wife of the above-named A. B., secretly and apart from her said husband, whether she desires to have [*&c., as in the order directing the examination*]. And we have taken such examination in writing, as above set forth.

We further certify that, at the time of such examination, we read over the said order to the said C. B., and explained to her the purport and effect thereof; and we were satisfied that she was then aware of the nature and object of the said examination.

[*If the funds are to be transferred and paid to the husband, add:*] and that she freely and voluntarily consented to the

(*x*) The husband, or his solicitor, or any person connected with them, should not be present at this examination: Dan. Pr. 89, note (*y*).

(*y*) The language of the order directing the examination should be here adopted.

(*z*) See Dan. Pr. 89; and notes to No. 2075 *ante*.

sums above mentioned being transferred and paid to her said husband, A. B.

E. F.
G. H.

Witness to the signatures of the said E. F. and G. H.,
X. Y.

2077.

Affidavit verifying the signatures to the examination and certificate (*c*).

Formal parts : see ante No. 693.

1. On the —— day of ——, 187—, I saw C. B., the wife of A. B., in the order made in this cause [*Or*, matter] dated the —— day of ——, 187— (*Order directing the examination*], respectively named, sign the paper writing, marked A (*d*), hereunto annexed, and purporting to be her examination taken pursuant to the said order.

2. On the said —— day of ——, I also saw E. F., and G. H., two of the commissioners named in the said order, respectively sign the paper writing, marked B (*e*), hereto annexed, and purporting to be their certificate of the said examination.

3. The signature "——," set and subscribed to the said examination, is of the proper handwriting of the said C. B.

4. The signatures "——," and "——," respectively set and subscribed to the said certificate, are of the respective proper handswriting of the said E. F. and G. H.

5. The signature "——," set and subscribed to the attestation at the foot of the said examination and certificate respectively, is of my proper handwriting.

2078.

Memorandum of identity of examination and certificate (*f*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

These are the paper writings, marked respectively A and B, referred to in the affidavit of X. Y., sworn in this cause [*Or*, matter] before me, this —— day of ——, 187—.

W. D., a commissioner, &c.

(*c*) See Dan. Pr. 89. This affidavit should be written on the third or fourth side of the sheet of paper containing the examination and certificate ; but it may be written on a separate sheet of foolscap.

(*d*) See *ante* No. 2075. For form of memorandum of exhibit, see *post* No. 2078.

(*e*) See *ante* No. 2076. For form of memorandum of exhibit, see *post* No. 2078.

(*f*) See Dan. Pr. 89. The memorandum should be written on the margin of the first page of the examination and certificate.

CHAPTER XXXVIII.

SOLICITORS.

Section I.—Admission, Striking off the Roll, Re-Admission, and Taking Out and Renewing Certificate to Practise.

(1.) *Admission* (*a*).

2079. Notice of intention to apply to be admitted a solicitor (*aa*)

Notice is hereby given, that A. B., of [*State the applicant's place of abode at the time of giving the notice*], whose place [*Or*, places] of abode [*Or*, service] for the last preceding twelve months, has [*Or*, have] been at [*State the applicant's place or places of abode or service during the twelve months next preceding the giving of the notice*], and who has served [*Or*, is now serving] under articles of clerkship to [*Here state the name or names, and place or places of abode, of the person or persons with whom the applicant has served as an articled clerk during the continuance of his articles of clerkship*], intends to apply in the month of —— next, to be admitted a solicitor of the Supreme Court.

Dated —— day of ——, 187—.

A. B. (*b*).

2080. Affidavit of service under articles of clerkship and of delivery of notice (*c*).

In the High Court of Justice.

In the matter of A. B., an Articled Clerk.

I, A. B., of ——, in the county of ——, gentleman, make oath and say :

1. Under and in pursuance of the articles of clerkship hereto

(*a*) Solicitors are admitted by the Master of the Rolls ; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 87.

(*aa*) See Notice of the Master of the Rolls, dated Jan. 7, 1878. The notice must, six weeks at least before the first day of the month in which the applicant proposes to be admitted, be delivered at the Petty Bag Office in the Rolls Yard.

(*b*) The notice must be signed by the applicant himself.

(*c*) See 6 & 7 Vict. c. 73, s. 14.

annexed, and bearing date the —— day of ——, 187—, I have actually and really served and been employed by ——, of ——, in the county of ——, gentleman, one of the solicitors of the Supreme Court, as his clerk in the practice of a solicitor from the —— day of ——, 187—, the day of the date of the said articles to the —— day of ——, 187—, inclusive, being the full term of —— years (*d*) mentioned in the said articles.

2. I did not, during the period of my service under the said articles of clerkship, hold any office or engage in any employment other than that of clerk to the said ——, in his business practice or employment of a solicitor (*e*).

3. I did, on the —— day of ——, 187—, deliver at the Petty Bag Office, in the Rolls Yard, Chancery Lane, Middlesex, a notice in writing, signed by myself, containing a statement of my then place of abode, and the name [*Or*, names] and place [*Or*, places] of abode of the person [*Or*, persons] with whom I have served as an articled clerk during the continuance of the said articles of clerkship, and containing in addition thereto a statement of my place [*Or*, places] of abode [*Or*, service] during the twelve months next preceding the giving of such notice, and purporting that I intended to apply, in the month of —— then next, to be admitted a solicitor of the Supreme Court (*f*).

2081.

The like, where the applicant has served under supplemental articles (*g*).

Formal parts: see ante No. 2080.

1. [*Proceed as in paragraph* 1 *of* No. 2080 *ante, down to the words*, "inclusive, being;" *and continue thus:*] a period of —— years and —— months and —— days.

2. Under and in pursuance of the supplemental articles of clerkship hereto annexed, and bearing date the —— day of ——, 187—, I [*Proceed as in paragraph* 1 *of* No. 2080 *ante, down to the words*, "inclusive, being;" *and continue thus:*], a period of —— years and —— months and —— days.

(*d*) As to the term for which a clerk must be articled, see 6 & 7 Vict. c. 73, s. 3; 23 & 24 Vict. c. 127, ss. 2, 3, 4, 5; 40 & 41 Vict. c. 25, s. 13; Judge's Regulations dated 5th Dec. 1877, rule 3.

(*e*) See 23 & 24 Vict. c. 127, s. 10; but now see 37 & 38 Vict. c. 68, ss. 4, 5, 6. Where an order has been obtained under the last-mentioned enactment, the form in the text should be modified accordingly.

(*f*) See the notice of the Master of the Rolls dated Jan. 1878; and form No. 2079 *ante*, and notes thereto.

(*g*) See 6 & 7 Vict. c. 73, s. 14. Articles of clerkship ought not to be assigned, but supplemental articles should be entered into; *Re Adams*, 23 W. R. 595.

3. The said several periods of —— and ——, together make up the full term of —— years (*h*), mentioned in the said articles, dated the —— day of ——, 187— [*Date of original articles*].

4. [*Same as paragraph* 2 *of* No. 2080 *ante.*]

5. [*Same as paragraph* 3 *of* No. 2080 *ante.*]

2082. The like, where applicant has served part of his time with a barrister or special pleader (*j*).

Formal parts: see ante No. 2080.

1. [*Proceed as in paragraph* 1 *of* No. 2080 *ante, down to the words,* "inclusive, being;" *and continue thus:*] a period of —— years and —— months and —— days.

2. I have actually and *bonâ fide* been and continued as pupil with and as such been employed by —— of ——, esquire, from the —— day of ——, 18—, to the —— day of ——, 18—, inclusive, being a period of [*State what*] (*k*). During the whole of such last-mentioned period the said —— was a practising barrister [*Or,* a person *bonâ fide* practising as a certificated special pleader] in England [*Or,* Wales].

3. The said several periods of —— and ——, together make up the full term of —— years mentioned in the said articles of clerkship (*l*).

4. [*Same as paragraph* 2 *of* No. 2080 *ante.*]

5. [*Same as paragraph* 3 *of* No. 2080 *ante.*]

2083. The like, where applicant has served part of his time with London agent (*m*).

Formal parts: see ante No. 2080.

1. [*Proceed as in paragraph* 1 *of* No. 2080 *ante, down to the words,* "inclusive, being;" *and continue thus:*] a period of [*State what*].

2. I have actually and really served and been employed by ——, of ——, in the county of ——, gentleman, one of the

(*h*) See note (*d*) to No. 2080 *ante.*

(*j*) See 6 & 7 Vict. c. 73, s. 14. As to service with a barrister or special pleader, see 6 & 7 Vict. c. 73, s. 6; 23 & 24 Vict. c. 127, s. 6.

(*k*) This period may not exceed one whole year; 6 & 7 Vict. c. 73, s. 6.

(*l*) See note (*d*) to No. 2080 *ante.*

(*m*) See 6 & 7 Vict. c. 73, s. 14. As to service with the London agent of the master, see 6 & 7 Vict. c. 73, s. 6; 23 & 24 Vict. c. 127, ss 2, 3, 4, 6.

solicitors of the Supreme Court, and the London agent of the said [*Solicitor named in the articles of clerkship*], as his clerk in the practice of a solicitor, from the —— day of ——, 187—, to the —— day of ——, 187—, being a period of [*State what*] (*n*).

3. The said several periods of —— and ——, together make up the full period of —— years mentioned in the said articles of clerkship (*o*).

4. [*Same as paragraph* 2 *of* No. 2080 *ante.*]

5. [*Same as paragraph* 3 *of* No. 2080 *ante.*]

2084.

Form of admission (*p*).

In the Supreme Court.

Forasmuch as upon examination and inquiry touching the fitness and capacity of —— to act as a solicitor of the Supreme Court, I am satisfied that the said —— is duly qualified to act as a solicitor of the said Court; and he, the said ——, having this day taken and subscribed in open Court the oath directed to be taken by solicitors by the statute of the 6th and 7th years of the reign of Queen Victoria, c. 73 (*pp*), I do admit him, the said ——, a solicitor of the Supreme Court, and direct his name to be enrolled as a solicitor of the said Court.

Dated this —— day of ——, one thousand eight hundred and ——.

Enrolled the same day.

(*n*) This period may not exceed one year; 6 & 7 Vict. c. 73, s. 6; 23 & 24 Vict. c. 126, ss. 2, 4.

(*o*) See note (*d*) to No. 2080 *ante*.

(*p*) The admission must be written on parchment and signed by the Master of the Rolls; 6 & 7 Vict. c. 73, s. 15; 40 & 41 Vict. c. 25, s. 23, and Sched. 2, part 2. On admission, a stamp duty is payable of £25 by means of a stamp impressed upon the admission form; Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 29, and Sched.; and also a Court fee of £5 by means of a stamp impressed upon the admission form; Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522. Forms with the stamps impressed may be obtained at the Inland Revenue Office, Somerset House. Before being sworn in, the applicant must leave the admission form duly stamped, with his articles of clerkship, supplemental articles, affidavit of service (see *ante* Nos. 2080—2083), and the Examiner's certificate of having passed a final examination (see 40 & 41 Vict. c. 25, s. 5), at the Petty Bag Office. As to the oath to be taken on admission, see 6 & 7 Vict. c. 73, s. 19.

(*pp*) See sect. 19.

(2.) *Striking off the Roll.*

2085. Motion paper by a solicitor admitted before Nov. 1875, to be struck off the roll (*q*).

In the High Court of Justice.

In re A. B., a solicitor of the Supreme Court.

To move on behalf of the said A. B., of [*place of business*], that he may be struck off the roll of attorneys or solicitors of every Court, the jurisdiction whereof has been transferred to the High Court of Justice.

An affidavit in support accompanies.

2086. Petition of course for the like (*r*).

In the High Court of Justice.

In the matter of A. B., a solicitor of the Supreme Court.

To the Right Honourable the Master of the Rolls.

The humble petition of the above-named A. B., of [*place of business*].

Showeth as follows:

1. In —— term, 187—, your petitioner was duly admitted a solicitor of the High Court of Chancery, and an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas.

2. Your petitioner is now desirous of having his name struck off the rolls of the said Courts (*s*).

Your petitioner therefore humbly prays, that he may be struck off the rolls of attorneys or solicitors of every Court, the jurisdiction whereof has been transferred to the High Court of Justice.

And your petitioner will ever pray, &c.

2087. Motion paper by a solicitor admitted in or after Nov., 1875, to be struck off the roll (*r*).

[*Proceed as in* No. 2085 *ante, down to* struck off; *and continue thus:*] the roll of solicitors of the Supreme Court of Judicature.

An affidavit in support accompanies.

(*q*) A solicitor may, upon his own application, by motion or petition of course at the Rolls, and upon filing a proper affidavit, be struck off the roll. For form of affidavit, see *post* No. 2089. The order must, before being acted upon, be produced to the Registrar of Solicitors (*i. e.*, the Incorporated Law Society; 6 & 7 Vict. c. 73, s. 21), for the purpose of being entered by him; 23 & 24 Vict. c. 127, s. 24; and must then be filed with the clerk of the Petty Bag; Rules and Regulations of Nov. 1875, p. 10.

(*r*) See note (*q*) to No. 2085 *ante*. For form of affidavit in support, see *post* No. 2089. For order in like case, see Seton, ed. 4, 651.

(*s*) It is not necessary to assign any ground for making the application; *Ex parte Charnock*, 1 W. W. & H. 548; *Ex parte Burrell*, 11 Jur. 1062.

2088.

Petition of course for the like (*r*).

[*Proceed as in* No. 2086 *ante, down to* as follows :]

1. On the —— day of ——, 187—, your petitioner was duly admitted a solicitor of the Supreme Court of Judicature.

2. Your petitioner is now desirous of having his name struck off the roll of the said Court (*s*).

Your petitioner therefore humbly prays, that he may be struck off the roll of solicitors of the Supreme Court of Judicature.

2089.

Affidavit in support (*w*).

In the High Court of Justice.

In the matter of A. B., a solicitor of the Supreme Court.

I, the above-named A. B., of [*place of business*], gentleman, make oath and say as follows :

[*If the applicant was admitted prior to November*, 1875, *proceed thus :*]

1. In —— term, 187—, I was duly admitted a solicitor of the High Court of Chancery, and an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas.

2. I am now desirous of having my name struck off the rolls of the said Courts (*x*).

[*But if the applicant was admitted in or after November*, 1875, *say :*]

1. On the —— day of ——, 187—, I was duly admitted a solicitor of the Supreme Court of Judicature.

2. I am now desirous of having my name struck off the roll of the said Court (*x*).

[*In either case, conclude thus :*]

3. No application or other proceeding is now pending in this honourable Court, or elsewhere, against me as such attorney and solicitor [*Or*, as such solicitor] as aforesaid ; and I do not expect or apprehend that any application or proceeding will be made or taken against me as such attorney and solicitor [*Or*, as such solicitor] as aforesaid.

(*r*) See note (*r*) to No. 2086 *ante*.
(*s*) See note (*s*) to No. 2086 *ante*.
(*w*) See note (*q*) to No. 2085 *ante*.
(*x*) See note (*s*) to No. 2086 *ante*.

2090.
Notice to registrar of solicitors of intended application to strike a solicitor off the roll (*a*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge*] (*b*).
In the matter of A. B., one of the solicitors of the Supreme Court (*c*).

Take notice that C. D., of [*address and description*], intends to apply to the High Court of Justice, at the expiration of fourteen clear days after the service of this notice upon you, or so soon thereafter as counsel can be heard on behalf of the said C. D., for an order *nisi* to strike the said A. B. off the roll of solicitors of the Supreme Court [*Or*, off the rolls of attorneys or solicitors of every Court, the jurisdiction whereof has been transferred to the High Court of Justice]. And take also notice that copies of all affidavits intended to be used in support of such application accompany this notice.

Dated —— day of ——, 187—.

[*Name and address of solicitor or party giving the notice; as in* No. 92 *ante.*]

To the Registrar of Solicitors.

2091.
Motion paper for order *nisi* to strike solicitor off the rolls (*d*).

Heading and title, see ante No. 2090; *other formal parts, see ante* No. 1570.

To move on behalf of C. D., of [*address and description*], for an order to strike the said A. B. off the roll of solicitors of the

(*a*) Where application is intended to be made for an order to strike the name of a solicitor (not being the solicitor making the application) off the roll, notice in writing of such intended application must be given to the Registrar of solicitors fourteen clear days before the application is made, and copies of all affidavits intended to be used in support of the application must be delivered to the Registrar with the notice; Solicitors Act, 1874 (37 & 38 Vict. c. 68), ss. 7, 8. An affidavit of service of such notice, and of delivery of such copies, must be produced in Court when the application is made; *Ibid.*, s. 9. For form of affidavit see *post* No. 2095. As to the power of the Registrar to appear on the application, and on any proceedings arising out of the application, and to draw up any order made by the Court, if not drawn up by the applicant, or to apply himself for an order, and as to his costs, see Solicitors Act, 1874 (37 & 38 Vict. c. 68), ss. 10, 11.

(*b*) The application may be made to any Judge of the division; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 87.

(*c*) The application should be entitled in the matter of the solicitor, and, where there is a cause or matter pending, in reference to which the misconduct took place, it may also be entitled in such cause or matter.

(*d*) As to striking a solicitor off the roll for misconduct, see Dan. Pr. 1713; Seton, ed. 4, 653. The jurisdiction is now exerciseable by the High Court of Justice or by the Court of Appeal, or by any division or Judge thereof;

Supreme Court [*Or*, off the rolls of attorneys or solicitors of every Court, the jurisdiction whereof has been transferred to the High Court of Justice], unless he shall, on the —— day of ——, 187—, show good cause to the contrary.

2092. Notice of motion to discharge order *nisi* (*e*).

[*Same as* No. 1607 *ante.*]

2093. Motion paper to make absolute order *nisi*, where no cause shown (*f*).

Heading and title, see ante No. 2090 ; *other formal parts, see ante* No. 1570.

To move on behalf of C. D., of [*address and description*], that the annexed order *nisi*, dated —— day of ——, 187—, may be made absolute.

An affidavit in support accompanies.

Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 87. The application is made by *ex parte* motion for an order *nisi* ; Smith's Pr. 116 ; and should be supported by affidavits. The application can only be made by counsel. As to the power of the Registrar of solicitors to appear upon the motion, and to draw up the order *nisi*, if granted and not drawn up by the applicant, see Solicitors Act, 1874 (37 & 38 Vict. c. 68), ss. 10, 11. The order *nisi* should be served upon the solicitor personally ; but if personal service cannot be effected, an application should be made to substitute service ; see *N.* v. *T.*, 18 Jan. 1856, Reg. Lib. B. 324 ; for form of application and of affidavit in support, see *ante* Nos. 1264, 1265. For form of affidavit of service of order, see *ante* No. 1266. For forms of order *nisi*, see Seton, ed. 4, 651, 652, Nos. 3, 4.

(*e*) As to the power of the Registrar of solicitors to appear upon this application, and to draw up any order made thereon, see Solicitors Act, 1874 (37 & 38 Vict. c. 68), ss. 10, 11. For order discharging order *nisi*, upon cause shown and upon conditions, see *Goodwin* v. *Gosnell*, 8 May, 1846, Reg. Lib. A. 1656 ; Seton, ed. 4, 652, No. 5 ; and for order making order absolute where cause shown disallowed, see *Wheatley* v. *Bastow*, 2 Aug. 1855, Reg. Lib. B. 1493. As to entering the order absolute with the Registrar of solicitors, and filing it with the clerk of the Petty Bag, see note (*f*) to No. 2093 *post.*

(*f*) The practice in the Chancery Division, where no cause is shown against an order *nisi*, is to move, *ex parte*, upon an affidavit of service, and the Registrar's certificate of no cause shown, to make absolute the order *nisi* ; Dan. Pr. 1439 ; but in *Re M. T.*, L. R. 8 Exch. 63, note (1), it was laid down by the Court of Exchequer, upon a motion to make absolute a rule *nisi*, that no cause having been shown, the rule was already absolute. For form of affidavit of service of order, see *ante* No. 1266. For order absolute in like case, see *N.* v. *T.*, 18 Jan. 1856, Reg. Lib. B. 324. As to the power of the Registrar of solicitors to appear upon the application, and to draw up the

(3.) *Readmission.*

2094.

Notice is hereby given that A. B., of [*State the applicant's place of abode at the time of giving the notice*], whose place [*Or*, places] of abode for the last preceding twelve months has [*Or*, have] been at [*State the applicant's place or places of abode during the twelve months next preceding the giving of the notice*], intends to apply, at the expiration of six weeks after the date hereof, to be readmitted a solicitor of the Supreme Court.

Notice of intention to apply to be readmitted (*a*)

Dated —— day of ——, 187—.

A. B. (*b*).

2095.

Formal parts: see ante No. 2080.

1. I did, on the —— day of ——, 187—, deliver at the Petty Bag Office in the Rolls Yard, Chancery Lane, Middlesex, a notice in writing signed by myself, containing a statement of my then place of abode, and in addition a statement of my place [*Or*, places] of abode during the twelve months next preceding the giving of such notice, and purporting that I intended to apply, after the expiration of six weeks from the said —— day of ——, 187—, to be readmitted a solicitor of the Supreme Court.

2. I did, on the —— day of ——, 187—, leave with the Clerk of the Petty Bag at the Petty Bag Office aforesaid, a true and exact copy of all affidavits filed by me or on my behalf in support of my application to be readmitted a solicitor of the Supreme Court, to be by him delivered to the Registrar of solicitors.

Affidavit of service of notice, and of having left copies of affidavits (*c*).

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order if not drawn up by the applicant, or himself to move that the rule *nisi* may be made absolute, see Solicitors Act, 1874 (37 & 38 Vict. c. 68), ss. 10, 11. An order to strike the name of a solicitor off the rolls must, before being acted upon, be produced to the Registrar of solicitors for the purpose of being entered by him; Solicitors Act, 1860 (23 & 24 Vict. c. 123), s. 24; and must then be filed with the clerk of the Petty Bag; Rules and Regulations, 2 Nov. 1875, p. 10.

(*a*) On an application to readmit a solicitor of the Supreme Court who has been struck off the roll, the applicant must, six weeks before the application is intended to be made, give notice thereof, as in the case of an original admission, and the affidavits in support of such application must be filed at the Petty Bag Office, and a copy thereof at the same time left with the clerk of the Petty Bag, to be delivered by him to the Registrar of solicitors; Rules and Regulations as to re-admission, 2 Nov. 1875, p. 9.

(*b*) The notice must be signed by the applicant himself.

(*c*) See note (*a*) to No. 2094 *ante*; an affidavit is required of the giving of notice, and of the leaving copies of affidavits in compliance with the order there stated; Rules and Regulations as to readmission, 2 Nov. 1875, p. 9.

2096.

Summons to dispense with notice (*d*).

In the High Court of Justice.

In the matter of A. B.

Upon the application of the said A. B., of [*address and description*], let the Registrar of solicitors or his agent attend me at my Chambers, Rolls Yard, Chancery Lane, Middlesex, on —— day, the —— day of ——, 187—, at —— of the clock in the ——noon, to show cause why the said A. B. should not be at liberty to give notice of his intention to apply for readmission on the —— day of —— next, notwithstanding that the day for giving such notice has passed.

Dated this —— day of ——, 187—.

2097.

Petition for readmission (*e*).

In the High Court of Justice.

In the matter of A. B.

To the Right Honourable the Master of the Rolls.

The humble petition of A. B., of [*address and description*].

Showeth as follows:

1. [*State the petitioner's admission, as in paragraph* 1 *of* No. 2086 *or* No. 2088 *ante.*]

2. [*State the proceeding in which the order was made striking the petitioner off the roll, particularly stating whether this was on the petitioner's own application or not; as thus:*] By an order of your lordship, dated the —— day of ——, 187—, and made upon the petition of your petitioner, it was ordered that your petitioner should be struck off the roll of solicitors of the Supreme Court of Judicature.

3. [*State how the petitioner has been employed since the date of the*

(*d*) An application to dispense with the rules as to giving notice must be made to the Master of the Rolls: Rules and Regulations as to readmission of Nov. 1875, p. 10. The application is by summons issuing out of the Petty Bag Office.

(*e*) An application for readmission is made by petition to the Master of the Rolls, presented at the Petty Bag Office, without the payment of any fee, and a copy of the petition must be served on the Registrar of solicitors not less than fourteen days before the same is heard; Rules and Regulations as to readmission, 2 Nov. 1875, p. 10. The statements in the petition, and also any other material facts on which the petitioner relies, should be verified by affidavit. As to leaving with the clerk of the Petty Bag a copy of the affidavits in support of the petition, to be delivered to the Registrar of solicitors, see *Ibid.*, p. 9; and note (*a*) to No. 2094 *ante.* On hearing the petition, the Master of the Rolls may dispose of the same, or may refer the same to any other division of the High Court of Justice; Rules, &c., of 2 Nov. 1875, p. 10. The order for readmission must be filed with the Clerk of the Petty Bag; *Ibid.*, p. 10. For order in like case, see *Re Langdon*, M. R., 16 Feb. 1877.

order striking him off the roll, and state also any special circumstances upon which the petitioner relies in support of his application.]

4. Your petitioner has not since the said —— day of ——, 187— [*Date of order striking petitioner off the roll*], either directly or indirectly, and either in his own name or in the name or names of any other person or persons, practised as a solicitor.

Your petitioner therefore humbly prays, that he may be readmitted a solicitor of the Supreme Court. And that the Registrar of solicitors may be ordered thereupon to grant to your petitioner his certificate to enable him to practise as a solicitor during the current year.

(4.) *Taking out and Renewing Certificate to Practise.*

2098. Notice of intention to apply for leave to take out or to renew certificate (*f*).

[*Proceed as in* No. 2094 *ante, down to* after the date hereof; *and continue thus :*] for leave to take out [*Or,* to renew] his certificate to practise as a solicitor of the Supreme Court.

A. B. (*g*).

2099. Summons to take out or to renew certificate (*h*).

[*Proceed as in* No. 2096 *ante, down to* show cause ; *and proceed thus :*] why the said Registrar should not grant to the said A. B. his certificate to enable the said A. B. to practise as a solicitor of the Supreme Court during the current year.

(*f*) If a solicitor neglects for a year after his admission to take out a certificate to practise, the Registrar will not afterwards grant a certificate to him except under an order of the Master of the Rolls. If a solicitor, after having at any time taken out a stamped certificate, neglects for a whole year after the expiration thereof to renew the same for the following year, the Registrar will not afterwards grant a certificate to such solicitor except under an order of the Master of the Rolls, who may direct the Registrar to issue a certificate to such person on such terms and conditions as he may think fit; 23 & 24 Vict. c. 127, s. 23; 40 & 41 Vict. c. 25, s. 23, and Sched. 2, part 2. On an application to take out or renew the annual certificate of a solicitor, the applicant must, six weeks before the application is intended to be made, give notice thereof as in the case of an admission, and the affidavits in support of such application must be filed at the Petty Bag Office, and a copy thereof at the same time left with the clerk of the Petty Bag to be delivered to the Registrar of solicitors; Rules and Regulations as to taking out and renewal of certificates, 2 Nov. 1875, p. 9. The application will be disposed of without any petition being presented or summons issued. As to dispensing with the notice, see note (*h*) to No. 2099 *post.*

(*g*) The notice must be signed by the applicant.

(*h*) Upon an application to dispense with the required notice of intention

2100.
Affidavit in support of application (*j*).

In the High Court of Justice.

In the matter of A. B., one of the solicitors of the Supreme Court.

I, the above-named A. B., of [*address*], gentleman, one of the solicitors of the Supreme Court, make oath, and say as follows:

1. [*State the applicant's admission, as in paragraph* 1 *of* No. 2086 *or* No. 2088 *ante.*]

2. [*State the circumstances under which the applicant omitted to take out, or ceased to renew, his certificate to practise, and how he has been employed whilst uncertificated; and state also any special circumstances upon which the applicant relies.*]

3. [*State that the applicant has not, whilst uncertificated, practised as a solicitor, as in paragraph* 4 *of* No. 2097 *ante; or, if the fact be otherwise, state the facts, and any circumstances excusing the fact.*]

4. [*If the application is made by summons, without giving the usual six weeks' notice, state the special circumstances making the case urgent* (*k*).]

2101.
Affidavit of service of notice, and of leaving copies of affidavits (*l*).

[*Same as* No. 2095 *ante, substituting the words*, "to take out [*Or*, to renew] my certificate to practise as," *for the words*, "to be readmitted."]

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to take out or renew a certificate, a summons must be served on the Registrar of solicitors, calling on him to show cause within ten days, why such taking out or renewal of certificate should not be allowed; and if no cause be shown, the Master of the Rolls may make an order for allowing such certificate to be issued: Rules and Regulations as to taking out and renewal of certificates, 2 Nov. 1875, p. 10. For order in like case, see *Re Rundle*, M. R., 22 March, 1878.

(*j*) This affidavit, and any others filed in support of the application, must be filed in the Petty Bag Office, and a copy thereof must be left with the clerk of the Petty Bag for delivery to the Registrar of solicitors; see note (*f*) to No. 2098 *ante.*

(*k*) See note (*h*) to No. 2099 *ante.*

(*l*) An affidavit must be made of notice having been given and copies left, in compliance with the order stated in note (*f*) to No. 2098 *ante*; Rules and Regulations as to taking out and renewal of certificates, 2 Nov. 1875, p. 9.

SECTION II.—AUTHORITY TO PROSECUTE OR DEFEND.

2102. Authority by an adult to institute and prosecute an action or proceeding (*a*).

I, A. B., of [*residence and addition*], authorise Mr. C. D., of [*place of business*], to commence and prosecute an action

Or, such proceedings as may be necessary and proper

on my behalf, in the High Court of Justice, for [*State, succinctly, the object; as thus:*] the administration of the estate of E. F., deceased.

Dated this —— day of ——, 187—.

A. B.

2103. The like: by indorsement on writ, or originating summons (*a*).

I, the within-named A. B., authorise Mr. C. D., of [*place of business*], to issue this writ [*Or*, this summons], and to prosecute on my behalf the action [*Or*, proceeding] to be commenced thereby.

Dated, *&c.*

A. B.

2104. Authority by an adult, to defend an action or proceeding (*b*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

I, (the defendant) A. B. of [*residence and addition*], authorise Mr. C. D., of [*place of business*], to appear to and defend this action on my behalf.

Or, to appear and act on my behalf, on the hearing of the petition presented by [*Or*, summons taken out on behalf of] E. F. in this matter; *or as may be.*

Dated, *&c.*

A. B.

2105. Authority by the next friend of a plaintiff under disability to use his name as such.

[*Same as* Nos. 46, 47, 48, 100, 101, 123, 124, 169, 172 *ante.*]

(*a*) As to the authority necessary to commence an action or proceeding, see Dan. Pr. 259, 260; as to staying an unauthorised proceeding, see Dan. Pr. 260—262; and *ante*, pp. 952—954.

(*b*) As to the authority to defend an action or proceeding, see Dan. Pr. 260, 456.

2106. Authority by the guardian *ad litem* of a defendant under disability to defend.

[*Same as* Nos. 71, 87, 114, 118, 138, 154 *ante*.]

2107. Consent of a married woman to an action or proceeding being commenced in her name.

[*Same as* No. 165 *ante*.]

2108. Authority by the relator in an action to use his name.

[*Same as* Nos. 250, 251 *ante*.]

Section III.—Change of Solicitor or Agent (*c*).

2109. Notice of appointment of a solicitor, instead of client acting in person (*d*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

Take notice that I am now concerned as solicitor in this cause [*Or*, matter] for the plaintiff [*or as may be*], instead of his acting in person, and that my address for service is at [*State where*] (*dd*).

Dated this —— day of ——, 187—.

E. F., of [*place of business*].

To the Clerks of Records and Writs; and to Mr. G. H., the solicitor [*Or*, agent] for the defendant [*or as may be*].

(*c*) A party suing or defending by solicitor is not at liberty to change his solicitor without an order of the Court for that purpose, which order must be served on all the other parties to the proceeding, and entered at the Record and Writ Clerks' Office; Cons. Ord. III. 3; Dan. Pr. 379, 1723—1725. The order may be obtained on motion or petition of course; Cons. Ord. III. 3. The rule, both at law and in equity, now is, that an order for changing a solicitor shall be made without any provision as to payment of his costs; *Grant* v. *Holland*, 3 C. P. D. 180.

(*d*) In this case no order seems to be necessary, but an order is sometimes obtained on petition of course at the Rolls; Dan. Pr. 1725, and note (*l*); see *post* No. 2110. The notice should be served on all the other parties and on the Record and Writ Clerk.

(*dd*) As to the address for service, see R. S. C. Ord. IV. 1, 2, 3*a* (R. S. C.,

2110. Petition of course to appoint a solicitor, instead of client acting in person (*e*).

Formal parts: see ante No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Your petitioner lately prosecuted [*Or*, defended] this cause [*Or*, matter] in person; and he is now desirous to appoint Mr. C. D., whose address for service is at [*State where*], to prosecute [*Or*, defend] the same on his behalf.

Your petitioner therefore humbly prays, that he may be at liberty to prosecute [*Or*, defend] this cause [*Or*, matter] by the said Mr. C. D. as is solicitor, instead of in person.

And your petitioner will ever pray, &c.

2111. Motion paper by client, to act in person, instead of by a solicitor (and agent) (*f*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff [*or as may be*], whose address for service is at [*State where*], for leave to prosecute [*Or*, defend] this cause [*Or*, matter] in person: instead of by Mr. E. F., of [*place of business*], as his solicitor.

[*If so:*] who acted by his agent, Mr. L. M., of [*place of business*].

2112. Petition of course for the like (*g*).

Formal parts: see ante No. 1576.

The humble petition of the plaintiff [*or as may be*].

Showeth as follows:

1. Your petitioner lately employed Mr. E. F., of [*place of business*], as his solicitor in this cause [*Or*, matter].

[*If so:*] who acted by Mr. L. M., of [*place of business*], as his agent.

2. Your petitioner, whose address for service is at [*State where*], is now desirous to prosecute [*Or*, defend] this cause [*Or*, matter] in person.

Your petitioner therefore humbly prays, that he may be at liberty to prosecute [*Or*, defend] this cause [*Or*, matter] in person: instead of prosecuting

Feb. 1876, rule 3); note (*j*) to No. 226, and note (*o*) to No. 227, *ante*; R. S. C. Ord. XII. 7, 8; note (*b*) at p. 146, *supra*; Cons. Ord. III. rules 2, 4, 5, 6.

(*e*) See note (*d*) to No. 2109 *ante*. For orders in like case, see *Miller* v. *Miller*, M. R., 24 April, 1870; *Browne* v. *Rennolls*, M. R., 11 July, 1870; *Pearce* v. *Dobinson*, M. R., 16 July, 1870; all in Rolls' Lib.

(*f*) See Dan. Pr. 1724.

(*g*) See Dan. Pr. 1724. For orders in like case, see *Young* v. *Bliss*, M. R., 30 Jan. 1860; *Halford* v. *Brooks*, M. R., 20 Dec. 1869; Rolls' Lib.

[*Or*, defending] the same by the said Mr. E. F. as his solicitor.

[*If so*:] who acted by his agent, the said Mr. L. M.

And your petitioner will ever pray, &c.

2113.

Notice of appointment of solicitor instead of one deceased (*h*).

Formal parts: see ante No. 2109.

Take notice that I am now concerned as solicitor in this cause [*Or*, matter] for the plaintiff [*or as may be*], in the place and stead of Mr. C. D., now deceased, and that my address for service is at [*State where*].

2114.

Notice of appointment of an agent, instead of one deceased (*j*).

Formal parts: see ante No. 2109.

Take notice that I am now appointed agent in this cause [*Or*, matter] for Mr. A. B., of [*place of business*], the solicitor therein for the plaintiff [*or as may be*]: in the place and stead of Mr. E. F., now deceased, and that my address for service is at [*State where*].

2115.

Notice by solicitor that he is concerned for new plaintiffs (*k*).

Formal parts: see ante No. 2109.

Take notice that I am now concerned as solicitor in this cause for A. B. and C. D., the present plaintiffs therein [*or as may be*], and that my address for service is at [*State where*].

(*h*) Where a solicitor dies, no order to appoint another need be obtained; but notice of the appointment should be given to the other parties and to the Clerk of Record and Writs: Dan. Pr. 1724, 1725.

(*j*) If the London agent of a solicitor dies, no order to appoint a new agent need be obtained; but notice of the appointment should be given to the other parties and to the Clerk of Records and Writs; Dan. Pr. 1724, 1725.

(*k*) The executor or administrator of a deceased plaintiff, or any new plaintiff, need not employ the former solicitor in the cause; and where a new solicitor is appointed, no order for the purpose need be obtained, but notice of the name and address for service of the solicitor acting for the new parties should be served on the other parties and on the Clerk of Records and Writs; Dan. Pr. 1725.

6.
Motion paper by client, to change his solicitor (and agent) (*l*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff [*or as may be*], for leave to appoint Mr. C. D., whose address for service is at [*State where*], as his solicitor: instead of Mr. E. F., of [*place of business*].

[*If so:*] And that Mr. G. H., whose address for service is at [*State where*], may be his agent, instead of Mr. L. M., of [*place of business*].

2117.
Petition of course for the like (*m*).

[*Proceed as in* No. 2112 *ante, to the end of paragraph* 1.]

2. Your petitioner is now desirous to employ Mr. C. D., whose address for service is at [*State where*], as his solicitor.

[*If so:*] and that Mr. G. H., whose address for service is at [*State where*], may be his agent.

Your petitioner therefore humbly prays, that he may be at liberty to change his solicitor in this cause [*Or*, matter], by appointing the said Mr. C. D. as such solicitor: in the place and stead of the said Mr. E. F.

[*If so:*] and that the said Mr. G. H. may be the agent of your petitioner therein, in the place and stead of the said Mr. L. M.

And your petitioner will ever pray, &c.

2118.
Motion paper, by a solicitor, to change his agent (*n*).

Formal parts: see ante No. 1570.

To move on behalf of Mr. C. D., the solicitor in this cause [*Or*, matter] for the plaintiff [*or as may be*], for leave to change his agent, by appointing Mr. E. F., whose address for service is at [*State where*], as such agent, in lieu of Mr. G. H., of [*place of business*].

(*l*) See Dan. Pr. 1723; and note (*c*) at p. 1126 *supra*. For order in like case, see *Dunn* v. *Brown*, M. R., 9 Nov. 1870, Reg. Lib. A. 2652; Seton, ed. 4, 637.

(*m*) See Dan. Pr. 1723; and note (*c*) at p. 1126 *supra*. For orders in like case, see *Staniland* v. *Staniland*, M. R., 15 Mar. 1864; *Re Thexton, Thexton* v. *Edmondson*, M. R., 25 Oct. 1866; *Capper* v. *Cambrian Railway Co.*, M. R., 1 Jan. 1867; *Elkins* v. *Morris*, M. R., 3 Dec. 1869; *Waite* v. *Morland*, M. R., 17 Dec. 1869; all in Rolls' Lib.

(*n*) See Dan. Pr. 1723; and note (*c*) at p. 1126 *ante*.

2119.
Petition of course for the like (*o*).

Formal parts: see ante No. 1576.

The humble petition of C. D., of [*place of business*], a solicitor of this honourable Court.

Showeth as follows:

1. The plaintiff [*or as may be*] employs your petitioner as his solicitor in this cause [*Or*, matter]; and your petitioner lately acted therein by Mr. G. H., of [*place of business*], as his agent.

2. Your petitioner is now desirous to change his said agent.

Your petitioner therefore humbly prays, that he may be at liberty to change his agent in this cause [*Or*, matter], by appointing Mr. E. F., whose address for service is at [*State where*], as such agent: in the place and stead of the said Mr. G. H.

And your petitioner will ever pray, &c.

2120.
Petition by a solicitor, properly concerned, for leave to act by an agent (*p*).

[*Proceed as in* No. 2119 *ante, to* as follows:]

1. The plaintiff [*or as may be*] employs your petitioner as his solicitor in this cause [*Or*, matter].

2. Your petitioner is now desirous to act by an agent.

Your petitioner therefore humbly prays, that he may be at liberty to employ Mr. E. F., whose address for service is at [*State where*], as his agent: in the place and stead of your petitioner acting as solicitor properly concerned.

And your petitioner will ever pray, &c.

2121.
Motion paper by client, to appoint a London solicitor, instead of a country solicitor and agent (*q*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff [*or as may be*], for leave to appoint Mr. C. D., whose address for service is at [*State where*], as his solicitor: instead of Mr. E. F., of [*place of business*] his present solicitor, who acted by his agent, Mr. L. M., of [*place of business*].

(*o*) See Dan. Pr. 1723; and note (*c*) at p. 1126 *ante*. For orders in like case, see *Johnson* v. *Rawlinson*, M. R., 1 Jan. 1867; *Whitehouse* v. *Cross*, M. R., 1 Dec. 1869; both in Rolls' Lib.

(*p*) See note (*c*) at p. 1126 *supra*. For order in like case, see *Stanford* v. *Roberts*, M. R., 30 July, 1870, Rolls' Lib.

(*q*) See Dan. Pr. 1723; note (*c*) at p. 1126 *ante*.

2122. Petition of course for the like (*r*).

[*Proceed as in* No. 2112 *ante, to the end of paragraph* 1.]

2. Your petitioner is now desirous to employ Mr. C. D., whose address for service is at [*State where*], as such solicitor.

Your petitioner therefore humbly prays, that he may be at liberty to change his solicitor in this cause [*Or*, matter], by appointing the said Mr. C. D. as such solicitor: in the place and stead of the said Mr. E. F., his present solicitor, who acted by his agent, the said Mr. L. M.

And your petitioner will ever pray, &c.

2123. Motion paper by client, to appoint a country solicitor and agent, instead of a London solicitor (*r*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff [*or as may be*], for leave to appoint Mr. C. D., of [*place of business*], as his solicitor: instead of Mr. E. F., of [*place of business*], his present solicitor: the said Mr. C. D. to act by his agent, Mr. G. H., whose address for service is at [*State where*].

2124. Petition of course for the like (*r*).

[*Proceed as in* No. 2112 *ante, to* as follows:]

1. Your petitioner lately employed Mr. E. F., of [*place of business*], as his solicitor in this cause [*Or*, matter].

2. Your petitioner is now desirous to employ Mr. C. D., of [*place of business*], as such solicitor: to act by Mr. G. H., whose address for service is at [*State where*], as his agent.

Your petitioner therefore humbly prays, that he may be at liberty to change his solicitor in this cause [*Or*, matter], by appointing the said Mr. C. D. as such solicitor: in the place and stead of the said Mr. E. F.; and that the said Mr. C. D. may act by his agent, the said Mr. G. H.

And your petitioner will ever pray, &c.

2125. Notice of motion to change solicitor and for delivery up of papers (*s*).

Formal parts: see ante No. 1571.

on the part of the plaintiff [*or as may be*], that he may be at liberty to change his solicitor in this action [*Or*, proceeding], by

(*r*) See Dan. Pr. 1723; note (*c*) at p. 1126 *ante*. For orders in like case, see *Attorney-General* v. *Iles*, M. R., 9 Jan. 1867, and *Winder* v. *Winder*, M. R., 1 Dec. 1869; Rolls' Lib.

(*s*) See note (*c*) at p. 1126 *ante*. As to a solicitor's lien, see Dan. Pr. 1715 *seq.* For order in like case, see *Hannaford* v. *Hannaford*, V.-C. S., 31 Jan. 1871, Reg. Lib. A. 240; W. N. (1871), 37; 19 W. R. 429.

appointing Mr. A. B., whose address for service is at [*State where*], as such solicitor, instead of Mr. C. D., the present solicitor therein of the said plaintiff [*or as may be*]. And that the said C. D. may be ordered within (seven) days after service upon him of the order to be made upon this application, to deliver up on oath to the applicant, or to the said A. B. as his solicitor, the papers in this action [*Or*, matter], and all other deeds, papers, and writings whatsoever in his custody or power belonging to the applicant, or in anywise relating to this action [*Or*, matter], the said A. B. undertaking to hold the same subject to the lien, if any, thereon of the said C. D. for what shall be found due to him upon any taxation of costs in this action [*Or*, matter].

2126.

Motion paper by a co-plaintiff, to appoint a solicitor (and agent) for a separate application (*t*).

Formal parts: see ante No. 1570.

To move on behalf of the plaintiff A. B., for leave to appoint Mr. G. H., whose address for service is at [*State where*], as his solicitor

[*If so:*] to act by his agent Mr. L. M., whose address for service is at [*State where*],

for the purpose of making an application respecting [*State what*] in this cause, separate from his co-plaintiffs therein.

2127.

Petition of course for the like (*u*).

Formal parts: see ante No. 1576.

The humble petition of A. B., one of the above-named plaintiffs.

Showeth as follows:

1. Your petitioner and the other co-plaintiffs above-named employ Mr. C. D. as their joint solicitor in this cause.

[*If so:*] who acts by Mr. E. F. as his agent.

2. Your petitioner is now desirous to make an application respecting [*State what*] in this cause, separate and apart from his co-plaintiffs therein, by Mr. G. H., whose address for service is at [*State where*], as his solicitor.

[*If so:*] to act by his agent, Mr. L. M., whose address for service is at [*State where*].

Your petitioner therefore humbly prays, that he may be at liberty to appoint the said Mr. G. H. as his solicitor, for the purpose of making the said separate application.

[*If so:*] and that the said Mr. G. H. may act by his agent, the said Mr. L. M.

And your petitioner will ever pray, &c.

(*t*) See Dan. Pr. 1724; note (*c*) at p. 1126 *supra*.

(*u*) *Ibid.* For orders in like case, see *Haynes* v. *Barton*, M. R., 18 Jan. 1868; *Gosnell* v. *Gosnell*, M. R., 31 May, 1870; Rolls' Lib.

2128.
Præcipe for a *subpœna* to name a solicitor (*v*).

In the High Court of Justice,
Chancery Division.
[*Reference to the record.*]
[*Short title.*] Seal a *subpœna* on behalf of A. B. [and another; *Or*, others], directed to C. D.: to name a solicitor.
Dated —— day of ——, 187—.
[*Name, &c., of solicitor or party issuing the writ: see ante* No. 92.]

2129.
The *subpœna* (*w*).

Victoria [*&c.: see ante* No. 93.]
To [*Insert name*], greeting:
We command you that, within eight days after the service of this writ on you, exclusive of the day of such service, laying all other matters and excuses aside, you do appear in the Chancery Division of our High Court of Justice, and name a solicitor for you in an action wherein —— are complainants, and —— are defendants; and observe what our said Court shall direct in this behalf: upon pain of an attachment issuing against your person, and such other process of contempt as our said Court shall award.
Witness [*&c.: conclude as in* No. 93 *ante*] (*x*).

2130.
Indorsement of writ (*y*).

[*Same as* No. 94 *or* No. 95 *ante.*]

(*v*) If on the death of the solicitor of a party, such party does not appoint another, or obtain an order giving him leave to act in person, the other side may sue out a *subpœna* against him to name a new solicitor: Dan. Pr. 1725. On sealing the *subpœna* a fee is payable of 2*s.* 6*d.*, if the proceeding is on the lower scale, 5*s.* if it is on the higher scale, by means of a stamp impressed upon the *præcipe*: Ord. as to Court Fees, Oct. 1875; Ord. as to Fees, April, 1876; Wilson, 506, 522.

(*w*) See note (*v*) to No. 2128 *ante*. For form, see Cons. Ord. Sched. E., No. 5.

(*x*) See R. S. C. Ord. II. 8; note (*d*) to No. 93 *ante*.

(*y*) See Cons. Ord. III. 2, 5.

Section IV.—Delivery and Taxation of Bills of Costs under the Statute 6 & 7 Vict. c. 73 (*a*).

2131. Motion paper by solicitor for common order to tax his bill delivered (*b*).

Formal parts: see ante No. 1570; *but entitle the motion paper thus:*

In the High Court of Justice,
Chancery Division.
In the matter of A. B., one of the solicitors of the Supreme Court (*c*).

To move on behalf of the said A. B., of [*place of business*], for the common order to tax the said A. B.'s bill of fees and disbursements.

See statement within (*d*).

(*a*) See the Solicitors Act, 1843, 6 & 7 Vict. c. 73, ss. 37—43; Dan. Pr. 1726—1756; Seton, ed. 4, 604—625. Where the application is made before the expiration of twelve months after the delivery of the bill, it should be made *ex parte* by motion or petition of course, provided that the bill has not been paid, and provided that no verdict has been obtained or writ of inquiry executed in any action by the solicitor or his representatives for the recovery of the amount of the bill. After the expiration of twelve months from the delivery of the bill, or after payment of the amount of the bill, or after verdict obtained or writ of inquiry executed in an action for the amount of the bill, a special application must be made to a Judge at Chambers by summons; and if the application is made by a party interested under 6 & 7 Vict. c. 73, s. 39, a special application must be made by summons. If a special application be made by summons when the order might have been obtained as of course, the applicant will be ordered to pay the costs of the application, although the order is made; Dan. Pr. 1735. The application must be entitled in the matter of the solicitor; 6 & 7 Vict. c. 73, s. 43. When the order is obtained *ex parte*, it should be served on the party against whom it is obtained; Dan. Pr. 1735. As to the proceedings on the reference, see 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1727; and *ante* pp. 1040—1044. The Taxing Masters have power under the common order to take the question of retainer into consideration, except so far as it is admitted by the petition; Dan. Pr. 1751. As to the costs of the reference, see 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1727, 1728. As to enforcing the order, see 6 & 7 Vict. c. 73, s. 43; Dan. Pr. 1731, 1755; *ante* note (*a*) at p. 687.

(*b*) See note (*a*) *supra*. The solicitor cannot apply until after the expiration of a month from the delivery of the bill, and then only in case no application for an order to tax has been made by the client within the month; 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1727.

(*c*) As to the title, see 6 & 7 Vict. c. 73, s. 43; note (*a*) *supra*.

(*d*) This statement should be to the effect of the allegations required in a petition of course for a like order; see *post* No. 2132.

2132.
Petition of course by solicitor, for taxation of his delivered bill (*h*).

In the High Court of Justice,
Chancery Division.
In the matter of A. B., one of the solicitors of this Court (*c*).
To the Right Honourable the Master of the Rolls.
The humble petition of the above-named A. B., of [*place of business*].

Showeth as follows:

1. Your petitioner was employed by C. D., of [*residence and addition*], as his solicitor in [*State, shortly, what; as thus:*] a certain action in this Court, in which the said C. D. was plaintiff, and E. F. was defendant, and in other matters [*Or*, in certain conveyancing business, and other matters; *or as may be*].

2. Your petitioner transacted such business; and on the —— day of ——, 187—, caused a bill of his fees, charges, and disbursements for the same, subscribed with his proper handwriting,

Or, enclosed in, and accompanied by, a letter subscribed with his proper handwriting, referring to such bill (*e*),

to be personally delivered to the said C. D. [*or as may be* (*f*)].

3. The said C. D. has not paid your petitioner's said bill, nor taken any steps to get the same taxed.

Your petitioner therefore humbly prays, that it may be referred to the Taxing Master to tax and settle the said bill: with the usual directions.

And your petitioner will ever pray, &c.

2133.
Order on petition of solicitor to tax his delivered bill (*g*).
(1). Direction to tax (*h*).

[*Date and Title.*]

Upon the humble petition of the said A. B. this day preferred unto the Right Honourable the Master of the Rolls, It was alleged that [*Recite the allegations in the petition*]:

It was therefore prayed, and it is accordingly ordered, that it be referred to the Taxing Master to tax and settle the said bill;

(*b*) See note (*b*) to No. 2131 *ante*.

(*c*) See note (*c*) to No. 2131 *ante*.

(*e*) As to what is a sufficient signature, see 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1726, 1731.

(*f*) As to what is a sufficient delivery, see 6 & 7 Vict. 73, s. 37; Dan. Pr. 1726, 1733. As to proof of compliance with the Act, see s. 37; Dan. Pr. 1729.

(*g*) For order in like case, see Seton, 605, No. 3. As to special directions, see Dan. Pr. 1751.

(*h*) For the principles of taxation, see Dan. Pr. 1298—1306. For the method of taxation, see Dan. Pr. 1307—1319; and *ante* pp. 1040—1044. As to proceeding *ex parte* with the taxation, see 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1727.

and that the petitioner, and also the said C. D., do produce before the said Master, upon oath, as he shall direct, all books, papers, and writings in their custody or power respectively, relating to the matters hereby referred, or any of them; and that they be examined touching the same matters, or any of them, as the said Master shall direct.

(2). Cash account (*j*).

And it is ordered that the petitioner do give credit for all sums of money by him received of, or on account of, the said C. D.; and that he be at liberty to charge all sums of money paid by him to or on account of the said C. D.

(3). Costs of reference (*k*).

And it is ordered (in case the said C. D. shall attend upon such taxation), that if such bill when taxed be less by a sixth part than the said bill as delivered, the said Master do tax the said C. D. his costs of such reference; and if such bill when taxed shall not be less by a sixth part than the said bill as delivered, the said Master do tax the petitioner his costs of such reference.

(4). Balance to be certified (*l*).

And it is ordered that the said Master do certify the amount due from the said C. D. to the petitioner, or from the petitioner to the said C. D., as the case may be: having regard to the costs of such reference (if taxed as aforesaid), and any sum or sums of money which may have been so received or paid as aforesaid.

(5). Direction to pay (*m*).

And it is ordered that the amount so to be certified be paid within twenty-one days after service of this order, and of the Taxing Master's certificate to be made in pursuance thereof, by the party from whom to the party to whom the same shall be certified to be due, unless the Court shall, upon special circumstances to be certified by the said Master, otherwise order, upon application to be made within one week after the date of the said Master's certificate by the party liable to pay such amount.

(6). Delivery up of deeds, &c., on payment (*n*).

And in case the said C. D. shall pay to the petitioner such sum as may be certified to be due to him, without further order: or in case the said Master shall certify that there is nothing due to the petitioner, or that he has been overpaid: it is ordered that the petitioner do deliver to the said C. D., upon oath, all deeds, books, papers, and writings in his custody or power belonging to the said C. D.

(*j*) As to what items of disbursement may be charged in the bill, see Dan. Pr. 1752—1754.

(*k*) As to the costs of the reference, see 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1727, 1728, 1754.

(*l*) As to certifying the balance and special circumstances, see 6 & 7 Vict. c. 73, ss. 37, 43; Dan. Pr. 1728, 1731.

(*m*) As to enforcing the order, see 6 & 7 Vict. c. 73, s. 43; Dan. Pr. 1731, 1755, and *ante* note (*a*) at p. 687.

(*n*) See 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1728.

And it is ordered that no proceedings be commenced by the petitioner against the said C. D. in respect of the said bill, pending such reference. (7). No proceedings to be commenced pending reference (*o*).

And it is ordered that a copy of this order be personally served on the said C. D. one week at the least before any warrant is taken out for the taxation of the said bill. (8). Service of order (*p*).

2134. Motion paper by the party chargeable for the common order to tax a delivered bill (*q*).

Formal parts : see ante No. 1570.

To move on behalf of C. D., of [*residence and addition*], for the common order to tax the said A. B.'s bill of fees and disbursements.

See statement within (*r*).

2135. Petition of course by party chargeable to tax a delivered bill, before action brought (*s*).

Title, and address to the M. R. : as in No. 2132 *ante.*

The humble petition of C. D., of [*residence and addition*].

Showeth as follows :

1. Your petitioner employed the above-named A. B., of [*place of business*], as his solicitor in [*State, shortly, what : see ante* No. 2132].

2. The said A. B., on the —— day of ——, 187—, delivered to your petitioner his bill of fees, charges, and disbursements : which, as your petitioner is advised, contains many improper charges [*If so, add :*] and charges for work not done on his retainer, and which your petitioner is not liable to pay (*t*).

3. Your petitioner submits to pay to the said A. B. what shall appear to be due to him upon the taxation of his said bill (*u*).

Your petitioner therefore humbly prays, that it may be referred to the Taxing Master to tax and settle the said bill : with all usual directions. And that no proceedings may be commenced against your

(*o*) See *Re Field*, W. N. (1877) 244.

(*p*) As to service generally, and substituted service, see Dan. Pr. 1735 ; the Court has no power to authorise service of the order out of the jurisdiction, but will grant substituted service ; *Re Maugham*, 22 W. R. 748.

(*q*) See 6 & 7 Vict. c. 73, s. 37 ; Dan. Pr. 1726, 1727 ; and note (*a*) at p. 1134 *supra*.

(*r*) This statement should be to the effect of the allegations in one of the forms, *post*, Nos. 2135, 2137, 2146.

(*s*) See 6 & 7 Vict. c. 73, s. 37 ; Dan. Pr. 1726, 1727 ; and note (*a*) at p. 1134 *supra*.

(*t*) See note (*a*) at p. 1134 *supra ;* Dan. Pr. 1751.

(*u*) See Dan. Pr. 1735.

petitioner in respect of the said bill, pending such reference (*uu*).

And your petitioner will ever pray, &c.

2136.

Order thereon (*v*).

Formal parts: as in No. 2133 *ante.*

It was therefore prayed, and it is accordingly ordered, that it be referred to the Taxing Master to tax and settle the said bill:

(1). Direction to tax (*w*).

and that the petitioner, and also the said solicitor, do produce before the said Master, upon oath, as he shall direct, all books, papers, and writings in their custody or power respectively, relating to the matters hereby referred, or any of them; and that they be examined touching the same matters, or any of them, as the said Master shall direct.

(2). Cash account (*x*).

And it is ordered that the said solicitor do give credit for all sums of money by him received of, or on account of, the petitioner, and that he be at liberty to charge all sums of money paid by him to or on account of the petitioner.

(3). Costs of reference (*y*).

And it is ordered that if such bill when taxed be less by a sixth part than the said bill as delivered, the said Master do tax the petitioner his costs of such reference; and if such bill when taxed shall not be less by a sixth part than the said bill as delivered, the said Master do tax the said solicitor his costs of such reference.

(4). Balance to be certified (*z*).

And it is ordered that the said Master do certify the amount due from the petitioner to the said solicitor, or from him to the petitioner, as the case may be: having regard to the costs of such reference, so to be taxed as aforesaid, and any sum or sums of money which may have been so received or paid as aforesaid.

(5). Direction to pay (*a*).

And it is ordered that the amount so to be certified be paid, within twenty-one days after service of this order, and of the Taxing Master's certificate to be made in pursuance thereof, by the party from whom to the party to whom the same shall be certified to be due: unless the Court shall, upon special circumstances to be certified by the said Master, otherwise order, upon application to be made within one week after the date of the said Master's certificate, by the party liable to pay such amount.

(*uu*) See *Re Field*, W. N. (1877) 244.
(*v*) For orders in like case, see Seton, ed. 4, 604, 605, Nos. 1, 2.
(*w*) See *ante* No. 2133 note (*h*).
(*x*) *Ibid.*, note (*j*).
(*y*) *Ibid.*, note (*k*).
(*z*) *Ibid.*, note (*l*).
(*a*) *Ibid.*, note (*m*).

And it is ordered that upon payment by the petitioner to the said solicitor of what may be certified to be due to him as aforesaid: or in case it shall appear that there is nothing due to him: the said solicitor do deliver to the petitioner, upon oath, all deeds, books, papers, and writings in his custody or power belonging to the petitioner. (6). Delivery up of deeds, &c. (*b*).

And it is ordered that no proceedings be commenced against the petitioner in respect of the said bill, pending such reference.

[*If a month from the delivery of the bill has elapsed, add* (*d*):] but the said Master is to make his certificate in a month (unless the said Master shall certify that further time is necessary to enable him to make his certificate): or this order is to be of no effect. (7). No proceedings to be commenced pending reference (*c*).

2137. Petition of course by party chargeable to tax a delivered bill, after action brought (*e*).

[*Proceed as in* No. 2135 *ante, to the end of paragraph* 2; *and continue thus:*]

3. The said A. B. has commenced an action against your petitioner in the Queen's Bench Division of this honourable Court [*or as may be*], to recover the amount of the said bill; and your petitioner has appeared thereto [*State, shortly, the subsequent proceedings, if any*].

4. Your petitioner submits to pay to the said A. B. what shall appear to be due to him upon the taxation of his said bill (*f*).

Your petitioner therefore humbly prays, that it may be referred to the Taxing Master of this Court to tax and settle the said bill: with all usual directions. [*If the action is brought in an inferior Court* (*ff*), *add:* And that all further proceedings may be stayed against your petitioner in respect of the said bill, pending such reference].

And your petitioner will ever pray, &c.

(*b*) See *ante* No. 2133, note (*n*).

(*c*) See *Re Field*, W. N. (1877) 244.

(*d*) Where the application is made after the expiration of a month from delivery, the Court or a Judge has power to impose conditions; 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1727. For order in like case, see Seton, ed. 4, 605, No. 2.

(*e*) See 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1727; and note (*a*) at p. 1134, *supra*.

(*f*) See Dan. Pr. 1735.

(*ff*) If the action is pending in the High Court, no order can be made to stay the proceedings; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 24, subs. 5; *Re Field*, W. N. (1877) 244.

2138.

Order thereon (*g*).

Formal parts: see ante No. 2133.

It was therefore prayed, and it is accordingly ordered, that it be referred [*Direction to tax bill, and clause as to the cash account: as in* No. 2136 *ante.*]

Costs of the action.

And in case it shall appear that there is anything due to the said solicitor, it is ordered that the said Master do tax the said solicitor his costs of the said action; and that such costs be added to the amount which shall be so found due.

Costs of reference. Balance.

And it is ordered that [*Clauses as to costs of reference, and ultimate balance: as in* No. 2136 *ante.*]

Where special circumstances certified.

And it is ordered that the amount so to be certified be paid accordingly: unless the Court shall, upon special circumstances to be certified by the said Master, otherwise order, upon application to be made within one week after the date of the said Master's certificate, by the party liable to pay such amount.

Delivery up of deeds, &c.

And it is ordered that [*Clause as to delivery up of deeds, &c.: as in* No. 2136 *ante.*]

Action in inferior Court stayed (*h*).

[*If the action is brought in an inferior Court* (*h*), *add:* And it is ordered that all further proceedings against the petitioner in respect of the said bill be stayed, pending such reference; but the petitioner is to carry this order, and the said bill of costs, into the office of the said Master on or before the —— day of ——; and, in default thereof, the said solicitor is to be at liberty to proceed with the said action, as if this order had not been made.]

Prosecution of order.

And it is ordered that either party be at liberty to prosecute this order; and the said Master is to make his certificate in a fortnight (unless the said Master shall certify that further time is necessary to enable him to make his certificate): or this order is to be of no effect.

Payment, where no special circumstance.

And in case the said Master shall not state any special circumstance in his said certificate, and shall certify that there is anything due from the petitioner to the said solicitor, it is ordered that the amount so certified be paid by the petitioner to the said solicitor; and in default of such payment being made, the said solicitor is to be at liberty, at any time after two days from the filing of the said Master's certificate (without service of this order, or of the said certificate), to sue out execution against the petitioner by *fieri facias*, writ of *elegit*, or otherwise, for the amount which may be so certified to be due as aforesaid.

Writs of execution (*j*).

(*g*) See the notes to No. 2133 *ante*. For order in like case, see Seton, ed. 4, 616.

(*h*) This clause can only be inserted where the action is pending in an inferior Court; see note (*ff*) to No. 2137 *ante*.

(*j*) See *ante*, note (*a*) at p. 687.

2139. Motion paper by party chargeable for delivery of bill, and taxation (*k*).

Formal parts : see ante No. 1570.

To move on behalf of C. D., of [*residence and addition*], for the common order for delivery by the said A. B. of the bill of fees, charges, and disbursements claimed by him against the said C. D.; and for taxation thereof : on the usual submission to pay (*l*).

2140. Petition of course for the like (*k*).

[*Proceed as in* No. 2135 *ante, to end of paragraph* 1 ; *and continue thus :*]

2. Your petitioner is desirous of obtaining the papers in the possession of the said A. B. belonging to your petitioner ; but the said A. B. refuses to deliver up the same until his bill of costs be paid.

3. The said A. B., although applied to, has not delivered his bill of costs against your petitioner.

4. Your petitioner submits to pay to the said A. B. what shall appear to be due to him in respect of the said bill (*l*).

Your petitioner therefore humbly prays, that the said A. B. may, within (a fortnight) after service, deliver to your petitioner a bill of all such fees, charges, and disbursements as he claims to be due to him from your petitioner ; and that it may be referred to the Taxing Master to tax and settle the said bill : with all usual directions.

And your petitioner will ever pray, &c.

2141. Order thereon (*m*).

Formal parts : see ante No. 2133.

It was therefore prayed, and it is accordingly ordered, that the said solicitor do, within (a fortnight) after service of this order (*n*), deliver to the petitioner a bill of fees and disbursements in all suits, causes, actions, and other matters of business in which he has been employed as the attorney or solicitor for the petitioner. And that it be referred [*Continue as in* No. 2136 *ante, to the end*].

(*k*) See 6 & 7 Vict. c. 73, s. 37 ; Dan. Pr. 1728, 1734 ; and note (*a*) at p. 1134, *supra*.

(*l*) See Dan. Pr. 1735.

(*m*) For order in like case, see Seton, ed. 4, 614. The order should be indorsed and served ; Dan. Pr. 1735. For form of indorsement, see *ante* No. 1262. As to service, see *ante*, note (*p*) to No. 2133. As to enforcing the order, see *ante*, note (*a*) at p. 687.

(*n*) See note (*m*), *supra*. For form of application to enlarge the time, see *post* No. 2142.

2142.

Summons for further time to deliver bill of costs, pursuant to order (*o*).

Formal parts: see ante No. 881; *title: see ante* No. 2131.

on the part of the above-named A. B., that the time limited for the applicant to deliver his bill of fees, charges, and disbursements, pursuant to the order dated the —— day of ——, 187--, may be enlarged until the —— day of ——, 187—.

2143.

Summons for the taxation of an unpaid bill, after a year from delivery (*p*).

Formal parts: see ante No. 865; *title: see ante* No. 2131.

on the hearing of an application on the part of C. D., of [*residence and addition*]:

1. That: upon the submission of the applicant to pay to the above-named A. B., of [*place of business*], what shall appear to be due to him upon the taxation of his bill hereinafter mentioned: it may be referred to the Taxing Master to tax and settle the bill of fees, charges, and disbursements, amounting to the sum of £——, delivered on or about the —— day of ——, 187—, to the applicant by the said A. B., as his solicitor: with all usual directions.

2. That no proceedings may be commenced against the applicant in respect of the said bill, pending such reference (*q*).

(*o*) See R. S. C. Ord. LVII. 6. For orders in like case, see *Re Jones*, V.-C. S. at Chambers, 24 August, 1866; Reg. Lib. A. 2148; *Re Hind*, M. R. at Chambers, 3 Aug. 1870, Reg. Lib. A. 2172. The solicitor will be ordered to pay the costs of the application; Dan. Pr. 1756.

(*p*) After the expiration of twelve months after the delivery of the bill, or after verdict recovered or writ of enquiry executed in an action to recover the amount of the bill, an order for a reference to taxation will not be made, except under special circumstances, to be proved to the satisfaction of the Court or Judge; 6 & 7 Vict. c. 73, s. 37; Dan. Pr. 1727. As to what special circumstances must be shown, see Dan. Pr. 1746; Seton, ed. 4, 610; exorbitant charges constitute special circumstances; *Watson* v. *Rodwell*, 26 W. R. 524. In either of the cases above mentioned the application must be made by a summons originating in Chambers; Dan. Pr. 1735; *supra*, note (*a*) at p. 1134; for the practice as to which, see *ante* Nos. 865—880, and notes thereto. As to the title, see *ante* No. 2131, and note (*c*) thereto. The application should be supported by an affidavit proving the circumstances relied on. For order in like case, see *Re Wilson*, M. R. at Chambers, 24 Nov. 1865, Reg. Lib. B. 2398.

(*q*) See *Re Field*, W. N. (1877), 244.

2144. Summons for the taxation of a paid bill (*r*).

Formal parts: see ante No. 865; *title: see ante* No. 2131.

on the hearing of an application on the part of C. D., of [*residence and addition*]:

1. That it may be referred to the Taxing Master to tax and settle the bill of fees, charges, and disbursements, amounting to the sum of £——, delivered by the above-named A. B., of [*place of business*], to the applicant, and paid by the applicant to the said A. B., on or about the —— day of ——, 187— [*or as may be*].

2. That the applicant and the said A. B., respectively, may be directed to produce before the said Master [*Continue as in ante* No. 2136, *paragraph* 1, *to the end of paragraph* 2].

4. That in case it shall appear that the said bill is overpaid, the said Master may be directed to certify the amount overpaid; and that in such case the said A. B. may be ordered, within (twenty-one) days after service of the order to be made hereon, and of the said Master's certificate to be made in pursuance thereof, to repay to the applicant what shall be certified to be the amount so overpaid by him.

5. That the said Master may be at liberty to state any circumstance specially, at the request of either party, as he shall think fit.

6. That the costs of this application, and of the said reference, may be dealt with in such manner as the Judge shall think fit to direct.

2145. Motion paper by third party for the common order to tax a delivered bill (*s*).

[*Same as* No. 2134 *ante.*]

(*r*) Notwithstanding payment of a bill, an order may be made referring the bill for taxation, if the special circumstances of the case appear, in the opinion of the Court or Judge, to require the same, and provided the application is made within twelve calendar months after payment; 6 & 7 Vict. c. 73, s. 41; Dan. Pr. 1731. As to what are special circumstances, see Dan. Pr. 1747, 1748; Seton, ed. 4, 619; *Watson* v. *Rodwell*, 26 W. R. 524. The application must be by summons originating in Chambers; *supra*, note (*a*) at p. 1134; for the practice as to which, see *ante* Nos. 865—880, and notes thereto. As to the title, see No. 2131 *ante*, and note (*c*) thereto. The application should be supported by an affidavit proving the circumstances relied on. For order in like case, see Seton, ed. 4, 618.

(*s*) See 6 & 7 Vict. c. 73, s. 38; Dan. Pr. 1729; and note (*a*) at p. 1134, *supra*. As to obtaining a copy of the bill, see 6 & 7 Vict. c. 73, s. 40; Dan. Pr. 1730.

2146.
Petition of course by a third party, for taxation of bill (*s*).

Title, and address to the M. R.: as in No. 2132 *ante.*

The humble petition of E. F., of [*residence and addition*].

Showeth as follows:

1. [*Show how the liability to pay was incurred; as thus:*] The above-named A. B. was employed by C. D. in certain business relating to the payment off [*Or*, transfer] of a mortgage created by your petitioner in favour of the said C. D., of certain property belonging to your petitioner.

2. [*State delivery of bill; as thus:*] The said A. B., on or about the —— day of ——, 187—, delivered unto your petitioner his bill of fees and disbursements relating to the said business: which your petitioner is liable, as mortgagor, to pay; but your petitioner is advised that the said bill contains many improper charges.

3. Your petitioner submits [*Continue as in* No. 2135 *ante, to the end of that form*].

2147.
Order thereon (*t*).

Formal parts: see ante No. 2133.

It was therefore prayed, and it is accordingly ordered, that it be referred [*Direction to tax bill, and costs of reference, and for production of books, &c.: as in* No. 2136 (1) (3), *ante*].

And it is ordered that the said Master do certify the amount due from the petitioner to the said solicitor, or from him to the petitioner, as the case may be: having regard to the costs of such reference so to be taxed as aforesaid.

And it is ordered that the amount so to be certified [*Direction to pay: as in* No. 2136 (5) *ante*].

And it is ordered that no proceedings [*Conclude as in* No. 2136 (7) *ante, including the direction as to the time within which the certificate is to be made*].

2148.
Summons, by a third party for taxation of an unpaid bill, after the expiration of a year from delivery (*u*).

[*Same as* No. 2143 *ante, omitting in paragraph* 1, *the words*, "as his solicitor."]

(*s*) See note (*s*) to No. 2145 *ante.*

(*t*) For order in like case, see Seton, ed. 4, 621.

(*u*) See 6 & 7 Vict. c. 73, ss. 37, 38; Dan. Pr. 1727, 1729; note (*p*) to No. 2143 *ante.* The Court or Judge may take into consideration special circumstances affecting the applicant, though not affecting the party chargeable with the bill; 6 & 7 Vict. c. 73, s. 38; Dan. Pr. 1729. The application must be by summons originating in Chambers; note (*p*) to No. 2143 *ante.*

[*Same as* No. 2144 *ante*.]

2149. Summons, by a third party for the taxation of a paid bill (*v*).

2150. Summons by a party interested to tax a delivered bill (*w*).

Formal parts: see ante No. 865 ; *title: see ante* No. 2131.

on the hearing of an application on the part of E. F., of [*residence and addition*].

1. That: on the submission of the applicant to pay what, if anything, shall appear to be due to the above-named A. B., of [*place of business*], upon taxation of his bill of fees and disbursements, and for business done as hereinafter mentioned: it may be referred to the Taxing Master to tax and settle the bill of fees, charges, and disbursements, amounting to the sum of £——, delivered by the said A. B. to C. D., as the trustee [*Or*, executor] of the will [*Or*, administrator of the effects] of G. H., deceased [*or as may be*] ; and which the said C. D. has paid [*Or*, claims to be entitled to pay] out of property in which the applicant is interested.

2. That all usual and proper directions may be given, touching such taxation.

3. That the costs of this application, and of the said reference, may be dealt with, in such manner as the Judge shall think fit to direct.

Dated [*&c.: Conclude as in* No. 865 *ante: including the footnote*].

(*v*) See 6 & 7 Vict. c. 73, ss. 38, 41 ; Dan. Pr. 1729, 1731 ; note (*r*) to No. 2144 *ante*. The Court or Judge may take into consideration special circumstances affecting the applicant, though not affecting the party chargeable with the bill ; 6 & 7 Vict. c. 73, s. 38 ; Dan. Pr. 1729. The application must be by summons originating in Chambers ; note (*r*) to No. 2144 *ante*. Where a defendant has paid the costs endorsed on a writ of summons, he may have such costs taxed notwithstanding payment, without showing special circumstances ; R. S. C. Ord. III. 7.

(*w*) See 6 & 7 Vict. c. 73, s. 39 ; Dan. Pr. 1729, 1730. As to obtaining a copy of the bill, see 6 & 7 Vict. c. 73, s. 40 ; Dan. Pr. 1730. An application under section 39 is a special application made by summons originating in Chambers ; note (*a*) at p. 1134, *supra*. For the practice as to originating summonses, see *ante* Nos. 865—880, and notes thereto. As to the title, see *ante* No. 2131, and note (*c*) thereto. For orders in like case, see Seton, ed. 4, 621, 622, Nos. 2, 3.

SECTION V.—ENFORCING SOLICITOR'S LIEN (*a*).

2151. Petition to charge fund in Court with amount of solicitor's taxed costs (*b*).

187—. B. No.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

To Her Majesty's High Court of Justice.

The humble petition of L. M., of [*place of business*], gentleman, a solicitor of the Supreme Court.

Showeth as follows:

1. [*State the retainer of the petitioner by the party to whom the fund recovered belongs, the institution of proceedings by the petitioner on behalf of such party, and the subsequent prosecution of such proceedings, showing that they resulted in the recovery of the fund in question.*]

Your petitioner therefore humbly prays as follows:

1. That it may be declared that the petitioner, as the solicitor employed by the plaintiff in the prosecution of this cause, is entitled to a charge upon the said £5,000 Consolidated £3 per cent. annuities in Court to the credit of this cause, B. *v.* D. 1876, B. 100, "The account of, *&c.*," and on the £300 cash in Court to the same credit, for the taxed costs, charges, and expenses of the petitioner of or in reference to this cause, as such solicitor as aforesaid.

2. That it may be referred to the Taxing Master

(*a*) Independently of the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28, a solicitor has a lien upon a fund recovered in any proceeding by his exertions for his costs of that particular proceeding, and this lien the solicitor may actively enforce; Dan. Pr. 1719—1721; Seton, 642, 643; but he has not independently of that enactment any lien upon real estate recovered by him for his client; *Shaw* v. *Neale*, 6 H. of L. Cas. 581. But by the Solicitors Act, 1860, s. 28, the Court or Judge before whom any proceeding has been heard or is depending, may declare that the solicitor through whose instrumentality any property of whatsoever nature has been recovered or preserved in such proceeding is entitled to a charge thereupon for his taxed costs, charges, and expenses of or in reference to such proceeding; as to this enactment, see Dan. Pr. 1721—1723; Seton, 644, 645; Morgan, 21 to 23.

(*b*) See note (*a*), *supra*. The application should be entitled in the cause or proceeding in which the fund has been recovered. The application may also be made under the Solicitors Act, 1860, s. 28 (see note (*a*), *supra*), and should then be entitled also in the matter of that Act; see *post* No. 2153, and note (*e*) thereto. For order in like case, see Seton, ed. 4, 641.

to tax such costs as between solicitor and client, including therein the costs, charges, and expenses of the petitioner of and in reference to this cause, and also including the costs of the said petitioner of and relating to this application.

3. That so much of the said £5,000 Consolidated £3 per cent. annuities in Court to the credit aforesaid, as with the said £300 cash in Court to the same credit, will raise such costs, charges, and expenses when taxed, may be sold.

4. That out of the money to arise by such sale and the said cash, the said costs, charges, and expenses may be paid to the petitioner L. M.

Or that [*Conclude as in* No. 1578 *ante*].

NOTE.—It is intended to serve this petition on [*Name the persons intended to be served; see ante* No. 1579]. Foot-note (*c*).

2152. Summons to charge a sum of money recovered with amount of solicitor's taxed costs (*d*).

Formal parts: see ante No. 881.

on the part of L. M., of [*place of business*], gentleman, a solicitor of the Supreme Court.

1. That it may be declared that, if the balance certified to be due on taking the accounts directed by the order made in this cause, and dated the —— day of ——, 187—, shall be in favour of the plaintiff, the applicant, as the solicitor employed by the plaintiff in the prosecution of this cause, is entitled to a charge upon the amount which shall be so certified to be due for the taxed costs, charges, and expenses of the applicant of or in reference to this cause, as such solicitor as aforesaid.

2. That [*Proceed as in paragraph* 2 *of the prayer of* No. 2151 *ante, to the end of that paragraph, substituting the term* "applicant" *for* "petitioner"].

3. That the defendant C. D. may be ordered, within seven days after the Chief Clerk's certificate finding a balance to be due from him to the plaintiff shall have become binding, or within seven days after the date of the certificate of taxation (whichever shall last happen), to pay the said costs, charges, and expenses to the applicant out of the balance which shall be so certified, so far as the same will extend.

4. That the said defendant C. D. may be ordered to pay the residue, if any, of such balance within the time aforesaid to the plaintiff A. B.

(*c*) See note (*l*) to No. 1579 *ante*.

(*d*) See note (*a*) at p. 1146 *supra*, and note (*b*) to No. 2151 *ante*. For order in like case, see Seton, ed. 4, 644.

2153. Petition for charging order on property recovered or preserved for amount of solicitor's taxed costs (*e*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.
And in the matter of the Solicitors Act, 1860 (*f*).
To Her Majesty's High Court of Justice.
The humble petition of L. M., of [*place of business*], gentleman, a solicitor of the Supreme Court.
Showeth as follows:

1. [*State the retainer of the petitioner to prosecute or defend a proceeding in the Court, the conduct by the petitioner of such prosecution or defence, and the subsequent course of proceedings, showing that the proceedings resulted in the recovery by or preservation for the party by whom the petitioner was retained, through the instrumentality of the petitioner, of the property in question.*]

Your petitioner therefore humbly prays, as follows:

1. That it may be declared that your petitioner, as the solicitor employed by the plaintiff [*or as may be*] in the prosecution [*or as may be*] of the said cause, is entitled to a charge upon the share and interest of the said plaintiff [*or as may be*] of and in the said hereditaments and premises at W. and P., and of and in any other property recovered by or preserved for him in the said cause for the taxed costs, charges, and expenses of your petitioner of or in reference to the said cause, as the solicitor of the said plaintiff [*or as may be*].

2. That it may be referred [*Continue as in paragraph 2 of the prayer of* No. 2151 *ante, to the end of that paragraph*].

3. That the amount of such taxed costs, charges,

(*e*) See the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28, note (*a*) at p. 1146, *supra*. The petition should be entitled in the cause or matter in which the property has been recovered or preserved, and in the matter of the Act; and should be served on the parties to the cause or matter; Dan. Pr. 1723; Seton, 644. The petition must be heard by the Judge before whom the cause or matter in which the property was recovered or preserved and the costs incurred, was heard; *Heinrich* v. *Sutton*, L. R. 6 Ch. 865; *Owen* v. *Henshaw*, 7 Ch. D. 385. For order in like case, see *Twynam* v. *Porter*, 24 Nov. 1870, Reg. Lib. B. 2946; L. R. 11 Eq. 181, 188.

(*f*) 23 & 24 Vict. c. 127; see the Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 1.

and expenses may be raised by a sale of the share and interest of the said plaintiff [*or as may be*] in the said hereditaments and premises, and other such property as aforesaid, and may be paid to your petitioner L. M.

Or that [*Conclude as in* No. 1578 *ante*].

NOTE.—It is intended to serve this petition on [*State whom, as in* No. 1579 *ante*]. Foot-note (*g*).

(*g*) See note (*l*) to No. 1579 *ante*.

CHAPTER XXXIX.

THE STATUTORY JURISDICTION OF THE CHANCERY DIVISION (*a*).

SECTION I.—TITLES OF PETITIONS, UNDER ACTS OF PARLIAMENT.

2154. Directions of Lord Lyndhurst as to the titles of petitions presented under Acts of Parliament (*b*).

In all cases where a petition is presented under the authority of an Act of Parliament to the High Court of Justice, the petition must be entitled in the matter of that Act, and in a substantial matter also (*c*): (1. 2) If it be a railway or other local Act, and under its powers a portion of the estate of any testator or intestate has been taken, the petition must be entitled in the matter of the estate of such testator or intestate; Or (3) If property settled by any deed of settlement, then in the matter of such settlement; Or (4) If land belonging to a rector, vicar, or corporate body, then it must be entitled, *Ex parte* the rector, vicar, or corporate body, as the case may be, and in the matter of the said Act; (5) In the case of legacies paid into Court under the Act 36 Geo. III. c. 52, and sought to be paid out, petitions may be entitled in the way the fund stands in the books of the Chancery Pay Office; (6) Petitions under private Acts of Parliament may be entitled in the Act alone.

Examples:

1. In the matter of the estate of George Woolley, deceased; and in the matter of the South Devon Railway Act, 1844.
2. In the matter of the settled estates of A. B., deceased; [*and in the particular Act*].
3. In the matter of the settlement of John Jarvis and wife; [*and in the particular Act*].
4. *Ex parte* the Rector of Woolwich; [*and in the particular Act*].

(*a*) See the Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 34 (2); and Dan. Pr. 1757, *et seq.*

(*b*) See Dan. Pr. 1758. For other examples of titles in like case, see the title of the particular Act in the INDEX.

(*c*) In practice, the substantial matter is usually and more conveniently placed before the title of the Act: as in the examples given.

5. In the matter of John Greaves, an infant legatee ; and in the matter of the 36 Geo. III. c. 52, entitled "An Act," *&c.*
6. In the matter of an Act for empowering the trustees of the estates of A. B., deceased, to grant leases, and for other purposes.

Section II.—Statutes relating to Charities (*d*).

(1.) *Generally.*

2155. Regulations and instructions concerning applications, under "The Charitable Trusts Act, 1853," for an order or certificate of the Board of Charity Commissioners, authorising the institution of any suit or other proceeding before any Court or Judge (*e*).

1. Any person applying for an order or certificate of the Board authorising the institution of any suit or other proceeding before any Court or Judge, should transmit to the Board a notice and statement in writing, setting forth whether or not he is a trustee or person administering or claiming to administer, or interested in, the charity, or an inhabitant of the parish or place within which the charity is administered or applied ; the amount of the gross annual income of the charity ; and all the other material facts and circumstances of the case ; and explaining the nature and objects of the proposed suit or other proceeding.

2. The facts and circumstances should be stated in numbered paragraphs, as far as conveniently may be.

3. Where the object of the proposed proceedings is the removal of trustees, their names, descriptions, and residences, and the reasons for their proposed removal should be stated.

4. The names, descriptions, and residences of the trustees proposed to be appointed should also be stated.

5. Where the object of the proposed proceeding is a new scheme, the notice and statement should contain information as to the past administration of the charity, and its results, and the nature and provisions of the proposed scheme.

(*d*) See Dan. Pr. 1759—1784; Seton, ed. 4, 556—567 ; *Ibid.*, 572—577 ; *Ibid.*, 579—583. As to the Grammar School Act (3 & 4 Vict. c. 77), see Dan. Pr. 1778—1780. As to the Church Building Acts Amendment Act (8 & 9 Vict. c. 70), see Dan. Pr. 1780—1781 ; and see 18 & 19 Vict. c. 124, ss. 10, 11. For forms of orders as to the administration of charities in general, see Seton, ed. 4, 550—556 ; *Ibid.*, 577—579 ; and under the Charitable Trusts Acts, see *Ibid.*, 568—572. As to the taxation, at the instance of the Charity Commissioners, of costs on behalf of a charity, or its trustees, see 18 & 19 Vict. c. 124, s. 40 ; Dan. Pr. 1756 ; and see *ante* Nos. 2134 *et seq.*

(*e*) For the cases in which the order or certificate of the Charity Commissioners must be obtained before any legal proceeding is taken concerning a charity, see Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 17, 18 ; Dan. Pr. 1759, 1760 ; *Holmes* v. *Guy*, 5 Ch. D. 901 ; *Hodgson* v. *Forster*, W. N. (1877) 74 ; and as to what is a charitable object, see Dan. Pr. 1760, 1761 ; and see the Charitable Trustees Incorporation Act, 1872 (35 & 36 Vict. c. 24), s. 14.

6. In proposing schemes, care should be taken to deviate as little as possible from the original purposes and intentions of the founder.

7. The Board may require the statement to be explained and altered, in point of form, in such manner and as often as may be thought fit.

8. The Board may also require the statement to be verified by statutory declaration or otherwise.

9. Where the proposed proceeding is to be taken under the special jurisdiction created by the Act, for the establishment or alteration of a scheme, or the appointment or removal of any trustee, notice must be given in the mode which will be directed by the Board.

10. When the Board shall have been satisfied that the proposed proceeding is proper, and that any required notice has been duly given, the requisite order or certificate will be issued to the applicant, or to such other person as may be approved.

2156.
Application for the order or certificate of the Charity Commissioners (*f*).

To the Charity Commissioners for England and Wales.

In the matter of the charity called [*Insert the usual name or designation of the charity, and the name of the parish, township or place, for the benefit whereof the charity was founded, or in which it is administered*], in the county of ——.

The undersigned, being [*The applicant should here state whether or not he is trustee, or person administering or claiming to administer, or interested in, the charity, or an inhabitant of the parish or place within which the charity is administered or applicable*], submits the following notice and statement :—

1. [*State here concisely, and as far as conveniently may be, in numbered paragraphs, all the material facts and circumstances of the case.*]

Under the foregoing circumstances, the undersigned is desirous of instituting proceedings for effecting the following objects ; that is to say :—

1st. [*State here, as far as conveniently may be, in numbered paragraphs, the specific objects for which proceedings are proposed to be taken.*]

The undersigned accordingly requests the Board to issue an order and certificate, authorising him to make an application to Her Majesty's High Court of Justice for effecting the above objects.

I declare that the above statement is in all respects true, according to my information and belief.

Dated this —— day of ——, 187—.

[*The applicant should here sign his name : adding his profession or occupation, and residence.*]

(*f*) See *ante* No. 2155, note (*e*).

(2.) *Sir Samuel Romilly's Act* (*g*).

2157. Petition under the Act, for leave to sell, grant leases, and exchange charity lands (*h*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of Frances Ashton's Charity; and of the 52nd Geo. III., chapter 101, intituled "An Act to provide a summary remedy, in cases of abuses of trusts created for charitable purposes."

To Her Majesty's High Court of Justice.

The humble petition of T. H., esquire, the Right Honourable Sir E. R., knight, and Sir R. H. I., baronet, M.P.

Showeth as follows:

1. Your petitioners are three of the trustees of a certain charity founded by the will of F. A., dated, *&c.*, called "The Charity for Poor Clergymen and Poor Clergymen's Widows;" and are also trustees of a charity founded by the same will, called "The Almshouse Charity."

2. [*Statement of establishment of a scheme for the management of the charities.*]

3. Under, and in accordance with, such scheme, the said charities have been since administered; and both the said charities are comprised in one scheme: although the trustees thereof are different.

4. The real estates belonging to the said charities are situate near the towns of D. and L., in the county of B.; and from various causes, but more especially the very large increase of the population of the said towns, and the increased facility of communication with the metropolis by means of railways, certain parts of the charity estates are most favourably situated for building purposes: and, if sold in small portions, or let on building leases, it would tend greatly to the advantage of the charities, and the increase of the income thereof.

5. Your petitioners lately instructed their surveyors, Messrs. C. & Co., to survey the charity lands, with a view to ascertain whether some parts of the same might not be more advantageously disposed of than by being let for agricultural purposes; and Mr. H. C., one of the members of the said firm, made a report to your petitioners, dated, *&c.;* which was as follows: [*Setting it out*].

(*g*) 52 Geo. III. c. 101; Dan. Pr. 1761—1766; Seton, ed. 4, 563, 564; and see Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 43.

(*h*) *Re Ashton Charities*, M. R. 2 July, 1853; S. C. 22 Beav. 288; Dan. Pr. 1763. For other forms of petitions under this Act, see Francis' Law of Charities, 242; Barry's Stat. Jur. 316. As to obtaining the sanction of the Charity Commissioners where the petition is not presented by the Attorney-General, see note (*e*) to No. 2155 *ante;* Dan. Pr. 1764. As to who may petition, see Dan. Pr. 1763; as to the persons on whom the petition must be served, see *Ibid.*, 1764. For the practice generally as to petitions, see *ante* Nos. 1578—1591, and notes thereto. As to the effect of the proceedings, see Dan. Pr. 1764. As to the proceedings in Chambers under the Act, see *Ibid.*, 1764, 1765. As to the further consideration of the petition, see Dan. Pr. 1765, 1766.

6. The said Messrs. C. & Co. have made another report to your petitioners; as follows: [*Setting it out*].

7. The said reports refer to a map, in the possession of your petitioners, of the whole of the charity estates and premises.

Your petitioners therefore humbly pray, that they may be at liberty to enter into contracts, subject to the approbation of this Court, for the sale, letting on building leases, and exchange, of such parts of the said charity estates as this Court may approve of; and that they may be at liberty, from time to time, to submit to the approbation of this Court such contracts as they may enter into; and on the approval thereof by this Court, to execute such deeds as may be necessary for carrying the same into execution; and that the moneys to be received by them may be invested, and held by them upon the same trusts as the lands in respect of which they were received were held; and that the dividends thereof may be applied accordingly.

Or that [*Conclude as in* No. 1578 *ante, and add foot note,* No. 1579 *ante*].

T. H.
E. R.
R. H. I.

Attestation (*j*).

Signed by the petitioners T. H., E. R., and Sir R. H. I., in the presence of }

J. S.,
Solicitor for the petitioners, in the matter of this petition.

2158.

Certificate of counsel, that petition is proper to be sanctioned (*k*).

I hereby certify, that this petition is proper for the sanction of Her Majesty's Attorney-General.

[*Signature of counsel.*]
——, 187—.

2159.

Certificate of petitioner's solicitor, as to competency to pay costs (*k*).

I hereby certify, that the petitioners are competent to pay all costs which may be incurred in the matter of this petition.

Dated this —— day of ——, 187—.

J. S.

2160.

Allowance of the Attorney-General (*k*).

This petition has been submitted to me; and I hereby allow the same, and humbly certify that it is proper to be heard before this Court, if this Court should think fit.

Dated —— day of ——, 187—.

[*Signature of Attorney-General.*]

(*j*) See Dan. Pr. 1763.
(*k*) *Ibid.*

2161. Summons to proceed (*kk*).

[*Same as* No. 1191 *ante.*]

2162. Appointment of trustees of a charity (*l*).

[*See the following forms, ante: which can be readily adapted:*]
Affidavit of eligibility of proposed trustees: No. 1088.
Their consent to act: No. 1089.
Affidavit verifying their signatures thereto: No. 1090.

2163. Formal parts of a scheme (*m*).

In the High Court of Justice,
Chancery Division.

[*Title.*]

(Proposed) Scheme for the regulation and management of the above-mentioned charity, and the estates, funds, and property thereof [*or as may be*].

1.
2. } [*Set out the various clauses, in numbered paragraphs.*]
3.

(3.) *The Charitable Trusts Acts,* 1853 *to* 1869 (*n*).

2164. Summons for relief under the Acts (*o*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of [*Describe the charity: according to its designation in the heading of the Charity Commissioners'*

(*kk*) See Dan. Pr. 1764. The summons must be served on the Attorney-General.

(*l*) See Dan. Pr. 1765.

(*m*) See Dan. Pr. 1764, 1765. As to schemes, see Seton, ed. 4, 560—562; and see the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 52; Dan. Pr. 1765, note (*r*). For the practice as to settling schemes at Chambers, see Dan. Pr. 1765. For forms of schemes, see Francis' Law of Charities, 233—242. For forms of orders approving schemes, see *Attorney-General* v. *Dean, &c., of Christ Church, Oxford,* V.-C. S, at Chambers, 16 Nov. 1866, Reg. Lib. A. 2695; and Seton, ed. 4, 553, 554.

(*n*) 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 32 & 33 Vict. c. 110; Cons. Ord. XLI. 10—13; Dan. Pr. 1766—1778; Seton, ed. 4, 572—577. For a collection of orders under these Acts, see Seton, ed. 4, 568—572. As to vesting real estate in the Official Trustee of Charity Lands, see 16 & 17 Vict. c. 137, s. 48, as amended by 18 & 19 Vict. c. 124, s. 15; Dan. Pr. 1770. For form of order in like case, see Seton, ed. 4, 568. As to vesting stock or securities in the Official Trustees of Charitable Funds, see 16 & 17 Vict. c. 137, s. 51; 18 & 19 Vict. c. 124, ss. 12, 18; 23 & 24 Vict. c. 136, s. 12; Dan. Pr. 1771. For forms of orders in like case, see Seton, ed. 4, 560, *seq.* As to the powers of the Court to enforce orders of the Commissioners, and as to making their awards rules of Court, see Dan. Pr. 1775, 1776.

(*o*) See Dan. Pr. 1768. An originating summons is necessary; for the practice as to which, see Dan. Pr. 1050, *et seq.;* and see *ante* Nos. 865—880, and notes thereto.

order or certificate (*p*): *see ante* Nos. 2155, 2156, *and add*:] and of the Charitable Trusts Act, 1853 *to* 1869.

[*Add any other special Act conferring jurisdiction in the particular case; as*: and of the Trustee Act, 1850.]

Let [*&c.*: *Continue as in* No. 865 *ante, to* noon], on the hearing of an application on the part of [*Set out the names of the applicants: as in the Commissioners' order or certificate; and add their places of residence and additions*]: in the order or certificate of the Board of Charity Commissioners for England and Wales, dated the —— day of ——, 187—, respectively named (*p*): that [*State the precise object of the application: as in the order or certificate; and add, if desired, a clause as to raising and paying the costs of and incident to the application*].

Dated [*&c.*; *Conclude as in* No. 865 *ante; including the foot note*].

2165.

Certificate verifying copy of the Commissioners' order or certificate, for Chambers (*q*).

We [*Or*, I] certify, that the above is a true copy of the original order or certificate of the Board of Charity Commissioners for England and Wales.

Dated this —— day of ——, 187—.

[*Add name, &c., of solicitor or party leaving the copy; as in* No. 92 *ante.*]

2166.

Authority of applicants to use their names (*r*).

[*Name of Charity.*]

We, A. B., of [*residence and addition*], and C. D., of, *&c.*, authorise Mr. E. F., of [*place of business*], to make an application in our names, in the matter of the above-mentioned charity, to Her Majesty's High Court of Justice in England, in conformity with the order or certificate dated the —— day of ——, 187—, of the Board of Charity Commissioners for England and Wales.

Dated this —— day of ——, 187—.

A. B.
C. D.

(*p*) As to this order or certificate, see *ante* No. 2155, note (*e*).
(*q*) See Dan. Pr. 1768.
(*r*) *Ibid.*, 1769.

2167. Certificate of the applicants' solicitor, as to their competency to pay costs (*s*).

[*Name of Charity.*]

I hereby certify, that A. B., C. D., *&c.*, in the order or certificate of the Board of Charity Commissioners for England and Wales, dated the —— day of ——, 187—, in the matter of the above-mentioned charity, respectively named, are competent to pay all costs which may be incurred in the matter of the application proposed to be made by them in pursuance of the said order or certificate.

Dated this —— day of ——, 187—.

E. F.
Solicitor for the said A. B.,
and others above-named.

2168. Petition of appeal from an order of the Charity Commissioners (*x*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the Charities of V. P. and Sir S. W., in the parishes of H., W. H., and S. H., in the county of M.; and of The Charitable Trusts Acts, 1853 to 1869.

To Her Majesty's High Court of Justice.

The humble petition of G. N., of *&c.*, and J. T., of, *&c.*

Showeth as follows:

1. Your petitioners are two of the rated inhabitants of the parish of H., in the county of M.

2—8. [*Statements showing the creation of charitable trusts of land in the parish of H.; the division of the parish for ecclesiastical purposes; and an apportionment of the charities thereof.*]

9. On the 10th day of November, 18—, the Charity Commissioners for England and Wales made and passed an order under their common seal, in the words and figures following; that is to say: [*Order of the Board, appointing trustees of the charities, and vesting the charity lands in the official trustee of charity lands*].

10. The following public notice hath likewise been issued by the said Charity Commissioners; that is to say: [*Notice of the order having been made*].

11. The said order of the Charity Commissioners for England and Wales hath, in manner aforesaid, been definitively published.

12. [*Statement as to the division of the parish for civil purposes.*]

(*s*) See Dan. Pr. 1769.

(*x*) See *Re Hackney Charities*, 10 Jur. N. S. 941; 12 W. R. 1129, M. R.; S. C. on appeal, 11 Jur. N. S. 126; 13 W. R. 398; and see 23 & 24 Vict. c. 136, ss. 2, 4, 8, 9; as amended by 32 & 33 Vict. c. 110, ss. 9, 10, 11; and Dan. Pr. 1774, 1775.

13. Your petitioners are aggrieved by the said order of the Board of Charity Commissioners: inasmuch as [*&c.; Stating the grounds*].

14. Due notice of the intention of your petitioners to appeal against the said order of the Board of Charity Commissioners has been given to the said Board, by delivering such notice to the said Board at their office twenty-one days before presenting this petition (*z*).

Your petitioners therefore most humbly pray as follows:

1. That the said order of the 10th day of November, 18—, of the Board of Charity Commissioners for England and Wales, as to the appointment of new trustees of the charities of V. P. and Sir S. W., may be discharged or varied; or may be remitted to the said Board for reconsideration: with such declaration in relation thereto as to this Court may seem meet.

2. That, if necessary, it may be declared that the lands so held as aforesaid, upon the charitable trusts created by the said V. P. and Sir S. W., are, and have been, well and effectually vested in the Churchwardens and Overseers for the time being of the original and entire parish of St. J. at H., and their successors, for an estate in fee simple, by virtue of the statute in that behalf.

3. That the costs of this application may be provided for.

Or that [*&c.; Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

(4.) *The Burial Acts* (*d*).

2169. Petition that charity lands vested in parochial trustees may be taken for a grave-yard (*e*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the Burial Board for the parish of E., in the county of S.
And in the matter of the Burial Acts, 1852—1871.

(*z*) See 23 & 24 Vict. c. 136, s. 8; Dan. Pr. 1774; and see as to giving notice to the Attorney-General, 32 & 33 Vict. c. 110, s. 11; Dan. Pr. 1775.

(*d*) See 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 22 Vict. c. 1; 23 & 24 Vict. c. 64; 25 & 26 Vict. c. 100; 34 & 35 Vict. c. 33; Dan. Pr. 1781, 1782; and see Baker on the Acts; Glen on the Acts.

(*e*) See Dan. Pr. 1782. For petition in like case, see *Re Eyham Burial Board* (filed 12 Aug. 1857); and for order dismissing same without costs, see V.-C. W., 3 Aug. 1857, Reg. Lib. A. 1570; 3 Jur. N. S. 956.

To Her Majesty's High Court of Justice.

The humble petition of the Burial Board for the parish of E., in the county of S.

Showeth as follows :

1. [*Appointment of the petitioners to be the Burial Board of the parish.*]

2. [*Order in Council, directing that burials in the parish churchyard should be discontinued.*]

3. [*Charitable use on which an allotment of land proposed to be taken for a new burial ground is held.*]

4. [*Resolution of the vestry approving of the site.*]

5. [*Assent, by a majority of the trustees thereof, to the land being so appropriated.*]

6. The Charity Commissioners for England and Wales have issued their order or certificate dated, *&c.*, in relation to the premises ; and such certificate is as follows ; that is to say : [*Setting out certificate authorising the application to the Court by petition for authority to appropriate the land*].

7. [*Letter from the Home Secretary, signifying his approval of the site.*]

Your petitioners therefore humbly pray, that they may be authorised and empowered to appropriate and take a portion of the said allotment to the extent of —— acres, as shown on the said map approved by the said Secretary of State, for the purposes of a burial ground for the said parish of E. ; and that the trustees of the said land may be directed to execute a conveyance (if any be necessary or expedient) for vesting in your petitioners such —— acres, or other portion of land so to be appropriated by your petitioners for the purposes aforesaid.

Or that [*&c. ; Conclude as in* No. 1578 *ante ; and add foot note,* No. 1579].

2170.
Summons that charity land, vested in parochial trustees, may be taken for a grave-yard (*g*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title, as in* No. 2169 *ante.*]

Let [*&c.; Proceed as in* No. 865 *ante, to* forenoon], on the hearing of an application on the part of the Burial Board for the parish of E., in the county of S., that they may be [*Continue as in prayer of* No. 2169 *ante, to* purposes aforesaid].

Dated [*&c.; Conclude as in* No. 865 *ante; including the foot note*].

(5.) *Municipal Corporations Acts* (*h*).

2171.
Petition for the appointment of new trustees of property held by a corporation for charitable purposes (*i*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the several municipal charities in the city of O., or the charities heretofore vested in the Mayor, Bailiffs, and Commonalty of the same city, or in any of the members of such body corporate, in their or his corporate capacity; And in the matter of A. B.'s Charity, in the same city; And in the matter of the Act 52nd George the Third, chapter 101; And in the matter of the Municipal Corporations Act, 1835; And of the Charitable Trusts Act, 1853.

To Her Majesty's High Court of Justice,

The humble petition of W. H. B., of O., esquire (*and eight others*).

Showeth as follows:

1—3. [*Statements of an order dated* 1*st Sept.* 1836, *directing the Master to appoint trustees of and for the charity estates and property late vested in, or under the administration of, the Corporation of O., or any of the members thereof in that character, which were affected by section* 71 *of the* 5 *&* 6 *Will. IV., c.* 76; *the Master's report appointing common and separate trustees of the classes of charities called the* "Church charities," *and the* "General charities," *in pursuance of such order; and an order, dated* 2*nd Aug.* 1837, *confirming such report, in part* (*l*).]

(*g*) See Dan. Pr. 1782. The application can only be made by summons when so directed by the Charity Commissioners' certificate; and then by an originating summons; for the practice as to which, see Dan. Pr. 1050, *et seq.*; and see *ante* Nos. 895—880, and notes thereto.

(*h*) See 5 & 6 Will. IV. c. 76, s. 71; 16 & 17 Vict. c. 137, s. 65; Dan. Pr. 1782, 1783.

(*i*) *Re Oxford Charities*, M. R. 9 Mar. 1861.

(*l*) See *Re Oxford Charities*, 3 M. & C. 239, 244; Dan. Pr. 1782.

4. A. B., one of the separate trustees of the said general charities, and who died on or about, *&c.*, by his last will, dated, *&c.*, and which has been duly proved by the executors thereof since his decease, directed his executors to transfer to the charitable trustees of the city of O., free of legacy duty, his ten shares of £20 each in the capital stock of the N. S. R. company: to be holden by such trustees and their successors for ever, upon the trusts thereby declared for the application of the dividends of the said shares in the purchase of coals, for the benefit of poor families respectively resident in the parishes of S. E. and S. C., in O.

5. The said R. S. [*and others of the appointed trustees*] have all departed this life; and the Lord Bishop of H. and your petitioners are the only surviving trustees of the same charities.

6. The said L. B. of H., and your petitioners W. H. B., *&c.*, are the only surviving common trustees of both the said classes of charities; and the said L. B. of H. is desirous of being discharged therefrom.

7. Your petitioners W. W. and J. P. are the only survivors of the four separate trustees of the said church charities: making altogether only eight continuing trustees thereof; and the said J. W. is the only survivor of the said four separate trustees of the said general charities: making altogether only seven continuing trustees thereof; and all the said several trustees are now advanced in years.

8. Under the circumstances aforesaid your petitioners, and the said L. B. of H., being desirous of applying to this honourable Court for an order discharging the said L. B. of H. from being a trustee of the said several charities, and appointing new trustees thereof respectively, caused a notice in writing to be transmitted to the Board of Charity Commissioners for England and Wales of such their desire (*m*); and the said Commissioners, by their order or certificate under their corporate seal, and dated, *&c.*, authorised your petitioners [*&c.; Stating the substance of the order or certificate*].

9. The following persons are fit and proper persons to be appointed new trustees of the said several charities, in the place and stead of the several deceased and retiring trustees; and they have respectively, by writing under their respective hands, signified their consent to act as such trustees, jointly with the continuing trustees, if appointed; that is to say: [*Setting out the names and additions of the proposed new trustees*]:

Your petitioners therefore humbly pray as follows:

1. That the said L. B. of H. may be discharged from being a trustee of the said several charities; and that the said [*Names of proposed trustees*] may be appointed trustees of the said several general charities, and of the said charity called A. B.'s

(*m*) See *ante* No. 2156.

charity: in the place of the said several deceased trustees thereof, and of the said L. B. of H.

2. That the same several last-named persons may also be appointed trustees of the said several church charities: in the place of the said several deceased trustees thereof, and of the said L. B. of H.

3. That all the real and personal property now held by your petitioners, upon trust for the said several charities respectively, may be conveyed, assigned, and transferred or paid so, and in such manner, as to vest in the continuing and new trustees to be appointed, as aforesaid, upon and for such and the same trusts as the same respectively are now subject or liable to.

4. That it may be referred to the Taxing Master to tax your petitioners, and the L. B. of H., their costs, charges, and expenses of their said application to the said Board of Charity Commissioners for England and Wales, and consequent thereon; and also to tax your petitioners, and the L. B. of H., and all other parties, their costs of this application: as between solicitor and client.

5. That an inquiry may be directed in what way, and out of what fund, such costs, and costs, charges, and expenses, ought to be raised and paid, by apportionment on the said several charities, or otherwise; and that such costs, and costs, charges and expenses, may be raised and paid accordingly.

Or that [*&c.; Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

[*Signatures of the petitioners, and attestation: see ante* No. 2157].

(6.) *Charitable Uses Acts* (*n*).

2172. Affidavit in support of application for enrolment (*o*).

In the matter of an indenture dated the —— day of ——, 187—, relating to the A. Chapel, situate at B., in the county of C. [*Or other substantial matter*].
And in the matter of The Charitable Trustees Incorporation Act, 1872.

I, A. B., of [*address and description*], make oath and say as follows:

1. The parchment [*Or*, paper] writing now produced and shown to me, and marked A. (*p*), and made between, *&c.*, is the deed, assurance, or instrument whereby [*Show that by the instrument sought to be enrolled, hereditaments or some estate or interest therein were conveyed or charged for charitable uses*].

2. [*Show that the instrument sought to be enrolled was made really and bonâ fide for full and valuable consideration, actually paid at or before the making or perfecting thereof, or reserved by way of rent-charge or other annual payment, or partly paid at or before the making or perfecting of such instrument, and partly reserved as aforesaid, without fraud or collusion.*]

3. [*Show that at the time of making the affidavit possession or enjoyment is held under such instrument.*]

4. [*Show that the omission to enrol the instrument in proper time has arisen from mere ignorance or inadvertence, or from the destruction thereof by time or accident.*]

5. [*State that no action, suit, or proceeding is pending for setting aside the instrument, or for asserting any right founded on the invalidity thereof; and that no judgment has been already obtained, founded on such invalidity.*]

6. [*Show means of knowledge.*]

2173. Summons to enrol a deed relative to a charitable use (*q*).

In the matter of an indenture dated the —— day of ——, 187—, relating to the A. Chapel, situate at B., in the county of C. [*Or other substantial matter*].
And in the matter of the Act 29th and 30th Victoria, chapter 57, intituled "An Act to make further provision

(*n*) See 29 & 30 Vict. c. 57; Dan. Pr. 1784. By a subsequent Act, the Charitable Trustees Incorporation Act, 1872 (35 & 36 Vict. c. 24), s. 13, the Clerk of Inrolments is authorised, upon proof of the same circumstances as those required to be proved under 29 & 30 Vict. c. 57, and without any order, to enrol any deed, assurance, or instrument of the description mentioned in the 29 & 30 Vict. c. 57, and such enrolment will be of the same effect as if made under the last-mentioned Act. For form of affidavit under the 35 & 36 Vict. c. 24, s. 13, see *post* No. 2172.

(*o*) See 35 & 36 Vict. c. 24, s. 13; note (*n*), *supra*.

(*p*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*q*) This application will only be necessary in case the Clerk of Enrolments is not satisfied with the evidence tendered to him of the circumstances

for the enrolment of certain deeds, assurances, and other instruments relating to charitable trusts."

Let [*&c.; Proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of [*Names, residences, and additions, of the applicants*] : trustees of [*Or*, governors of ; *Or*, directors of ; *Or*, managers of ; *Or*, being persons entitled to act in the management of ; *Or*, being persons interested in] the above-mentioned charity : that the deed, assurance, or instrument

Or, that the several deeds, assurances, or instruments specified in the schedule hereto may be enrolled in this Court, within six calendar months from the date of this order : notwithstanding the time limited by law for that purpose has expired. Dated [*&c.; Conclude as in* No. 865 *ante*].

The schedule above referred to.

[*Set out the date, parties, and object of the deed, &c.; as thus :*] An indenture dated the —— day of ——, 187—, made between A. B., of the one part, and C. D., E. F., and G. H., of the other part : being a conveyance of certain hereditaments at ——, for and upon the charitable uses and trusts therein mentioned.

2174. Affidavit in support of the summons (*r*).

Title, see ante No. 2173 ; *other formal parts, see ante* No. 693.

1. [*Identify the instrument to be enrolled; as thus :*] The parchment [*Or*, paper] writing now produced and shown to me, and marked A. (*s*), is the deed, assurance, or instrument mentioned or referred to in the summons taken out in this matter, on behalf of A. B. and others, on the —— day of ——, 187—, at the Chambers of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor Sir ——].

2. [*Show that the instrument is one conveying or charging hereditaments or an estate or interest therein for charitable uses.*]

3—7. [*Same as paragraphs* 2—6 *of* No. 2172 *ante.*]

required to be proved ; see 35 & 36 Vict. c. 24, s. 13 ; *supra*, note (*n*) at p. 1163. As to the application, see Dan. Pr. 1784. For order in like case, see *Re Page*, V.-C. M. at Chambers, 5 Aug. 1870, Reg. Lib. B. 2378. The application must be made by an originating summons : for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante* Nos. 865—880, and notes thereto. The application is made *ex parte*.

(*r*) See note (*n*) at page 1163 *supra* ; and note (*q*) to No. 2173 *ante*.

(*s*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

Section III.—The Trustee Relief Act (*r*).

2175. Affidavit of trustee, for purpose of paying or transferring a trust fund into Court (*s*).

In the High Court of Justice,
Chancery Division.
In the matter of [*Describe the trust; as thus:*] the trusts of the sum of £1,000, bequeathed by the will of A. B. in favour of C. D.
And in the matter of the Act 10th and 11th Victoria, chapter 96, intituled "An Act for better securing trust funds, and for the relief of trustees."
[*Add, when applicable:*] and of the Act 12th and 13th Victoria, chapter 74, intituled "An Act for the further relief of trustees (*t*)."

I, E. F., of [*&c; Set out the name and address of the trustee* (*u*)], make oath and say as follows:

1. [*State where the trustee is to be served with notice* (*x*)*; as thus:*] The office of Messrs. G. and H., situate at [*State where*], in the (county) of ——, is the place where I am to be served with any petition, summons, or order, or with notice of any proceeding relating to the trust fund hereinafter mentioned.

2. [*State the amount of money, or the description and amount of stock or securities which the trustee proposes to pay or transfer into, or deposit in Court, to the credit of the trust, and whether legacy or succession duty (if chargeable) has or has not been paid* (*y*)*; as thus:*] Under the provisions of the above-mentioned Act, I propose to pay into Court the sum of £ D. cash, and to transfer into Court the sum of £ A. Consolidated £ 3 per cent. annuities, to the credit of: In the matter of [*Describe the trust; as thus:*] the trusts of the

(*r*) 10 & 11 Vict. c. 96; amended by 12 & 13 Vict. c. 74; 35 & 36 Vict. c. 44, s. 26, and Sched. 2, Part. II.; 36 & 37 Vict. c. 66, s. 25, subs. 6; Chancery Funds Cons. Rules, 1874, rules 34, 66; Chancery Funds Amended Orders, 1874, rules 5 to 10. As to these Acts, the cases thereon, and practice thereunder, see Dan. Pr. 1784—1797; Seton, ed. 4, 494—499; Morgan, 63—75. As to the jurisdiction of the County Courts, see 28 & 29 Vict. c. 99, s. 1; 30 & 31 Vict. c. 142, ss. 24—26; Dan. Pr. 1785, note (*r*), 1872.

(*s*) As to the form of the affidavit, see 10 & 11 Vict. c. 96, s. 1; Chancery Funds Cons. Rules, 1874, rule 34. The affidavit must be printed; *Ibid.* For the mode of making payments and transfers into, and deposits in Court, see *ante*, note (*o*) to No. 1974; note (*a*) to No. 1975; and note (*f*) to No. 1976.

(*t*) As to the title of the affidavit, see Chancery Funds Cons. Rules, 1874, rule 34.

(*u*) See *Ibid.* Where there are more trustees than one, the affidavit should be made by both or all; but where a reasonable explanation is given, the Paymaster-General may be directed to receive the fund on the affidavit of one only; see Dan. Pr. 1788.

(*x*) Chancery Funds Cons. Rules, 1874, rule 34 (2).

(*y*) *Ibid.* (3).

sum of £1,000, bequeathed by the will of A. B. in favour of C. D., subject to legacy duty (*z*).

3. [*Set out a short description of the trust, and of the instrument creating it* (*a*) *; as thus :*] The above-named A. B., by her last will dated, *&c.*, bequeathed a legacy of £1,000 to the above-named C. D., therein described as the daughter of E. D. and F. his wife ; and directed that the interest and dividends thereof should accumulate until the said C. D. attained the age of twenty-one years ; and then to be paid to her with the capital ; but in case of the death of the said C. D. under that age, then the testatrix directed that the said legacy should fall into the residue of her estate ; and the testatrix thereby bequeathed such residue to L. M. absolutely ; and appointed me the deponent, and one N. O., executors of her will.

4. The said testatrix died on, *&c.*, without having altered or revoked her said will ; and I and the said N. O. duly proved such will in the Principal Registry of Her Majesty's Court of Probate, on, *&c.*

5. On the —— day of ——, I and the said N. O. set apart, out of the assets of the said A. B., the sum of £1,000 to answer the said contingent legacy to the said C. D. ; and invested such sums in the purchase in our joint names of the sum of £ A. Consolidated £3 per cent. annuities. The said N. O. has since died ; and the said C. D. is now an infant of the age of —— years.

6. I have received the sum of £ B. for the half-year's interest which accrued due on the said annuities on the —— day of —— ; and after deducting and retaining thereout the sum of £ C., for the costs of paying and transferring the said trust fund into Court (*b*), there remains the sum of £ D. cash ; and which sums of £ A. Consolidated £3 per cent. annuities, and £ D. cash, I propose to transfer and pay into Court, as hereinbefore stated.

7. [*State the names of the persons interested in, or entitled to the fund, to the best of the knowledge and belief of the trustee* (*c*) *; as thus :*] To the best of my knowledge and belief, the only persons interested in, or entitled to the said sums of £ A. Consolidated £3 per cent. annuities, and £ D. cash, are the said C. D., as the immediate legatee thereof : subject to the contingency aforesaid ; and the said L. M. : as the residuary legatee named in the said testatrix's will.

8. [*Submission of the trustee to answer inquiries ; as thus* (*d*) *:*] I submit to answer all such inquiries relating to the application of the said sums of £ A. Consolidated £3 per cent. annuities, and

(*z*) As to the account to which the fund should be paid, see Dan. Pr. 1788 ; as to the titles of accounts, see note (*t*) to No. 1974 *ante*.

(*a*) Chancery Funds Cons. Rules, 1874, rule 34 (4).

(*b*) As to the costs of paying in the fund, see Dan. Pr. 1795—1797 ; Seton, ed. 4, 497, 498.

(*c*) Chancery Funds Cons. Rules, 1874, rule 34 (5).

(*d*) *Ibid.* (6).

£ D. cash, as this honourable Court, or any Judge thereof at Chambers, may think proper to make or direct.

9. [*Statement whether the money to be paid into Court, or the dividends on the securities to be transferred into or deposited in Court, and the accumulations of dividends thereon are desired to be invested, or whether it is unnecessary to invest the same, or to place the same on deposit* (*e*) *; as thus :*] I desire that the said sum of £ D. cash, and the dividends to accrue on the said £ A. Consolidated £3 per cent. annuities, and on the annuities to be purchased, with the said £ D. cash, and all accumulations of dividends thereon, may be invested in Consolidated £3 per centum annuities.

Sworn [*&c. ; as in* No. 696 *ante.*]

2176. Notice of a payment and transfer under the Act having been made (*g*).

Title, as in the trustee's affidavit : see ante No. 2175 ; *other formal parts : see ante* No. 21.

Take notice that on the —— day of ——, 187—, E. F., of [*residence and addition*], the executor of the will of A. B., late of [*residence and addition*], deceased [*or as may be*] : under the circumstances set forth in the affidavit of the said E. F. filed in this matter on the —— day of ——, 187— : transferred into Court the sum of £ A. Consolidated £3 per cent. annuities, and paid into Court the sum of £ D. cash, to the credit of [*State what*], in accordance with the provisions of the above-mentioned Act of Parliament.

And also take notice that you are named in the said affidavit as the person [*Or*, as one of the persons] entitled to, or interested in, the said sums of annuities and cash [*or as may be*].

2177. Petition for transfer and payment out of fund paid in under the Act (*h*).

Title, as in the trustee's affidavit (*i*) *: see ante* No. 2175 ; *other formal parts : see ante* No. 1578.

The humble petition of C. D., of [*residence and addition*].

Showeth as follows :

1. [*Statement of the trustee's affidavit on which the fund was paid in ; as thus* (*k*) *:*] The trust fund to which this petition relates

(*e*) Chan. Funds Cons. Rules, 1874, rule 34 (7). As to the amounts which will be invested, see Chancery Funds Cons. Rules, 1874, rule 66. For form of request to discontinue investing or placing on deposit, see *ante* No. 1997.

(*g*) Chancery Funds Amended Orders, 1874, rule 5. As to serving the notice abroad by registered letter, and as to advertising the notice, see Dan. Pr. 1789.

(*h*) See Chancery Funds Amended Orders, 1874, rule 6. A petition, and not an action, is the proper mode of proceeding ; *Pelling* v. *Goddard*, 26 W. R. 476. As to the persons entitled to apply, see Dan. Pr. 1790 ; a person not named in the trustee's affidavit may apply ; *Re Puttrell's Trust*, 7 Ch. D. 647 ; *Pelling* v. *Goddard*, 26 W. R. 476. As to service of the petition, see Chancery Funds Amended Orders, 1874, rules 7, 8 ; Dan. Pr. 1791, 1792. As to the evidence in support, see Dan. Pr. 1793 ; and as to petitions, generally, see Dan. Pr. 1451, *et seq.* ; and *ante* Nos. 1578—1591, and notes thereto.

(*i*) See Chancery Funds Amended Orders, 1874, rule 10.

(*k*) As to the statements of the petition, see *Ibid.*, 9, 11 ; Dan. Pr. 1791.

was paid and transferred into Court, to the credit of the above-mentioned matter, on the affidavit of E. F., filed therein on the —— day of ——, 187—. The said affidavit stated, among other things, that [*Set out, from the affidavit, the description of the trust, the manner in which it was created, the interests of the persons entitled, the difficulty which induced the trustees to pay the fund into Court; and the payment in; see statements in* No. 2175 *ante*].

2. [*Show the present state of investment of the fund, from the Paymaster-General's voluntary certificate* (*kk*), *as thus:*] The said sums of £ A. Consolidated £3 per cent. annuities, and £ D. cash, and the dividends and accumulations of dividends thereon, are now represented by the sums of £ B. Consolidated £3 per cent. annuities, and £ C. cash, remaining on the credit of the said matter.

3. [*State how the petitioner acquired title: as thus:*] Your petitioner is the person referred to in the will of the said testatrix, and in the said affidavit of the said E. F., as C. D., daughter of E. D., and F. his wife. On the —— day of ——, 187—, your petitioner attained her age of twenty-one years; and thereupon became absolutely entitled to the said trust fund.

4. [*Name a place for service* (*l*); *as thus:*] The office of your petitioner's solicitor, Mr. X. Y., situate at [*State where*], in the (county) of ——, is the place where your petitioner may be served with any petition or summons, or notice of any proceeding or order of this honourable Court, relating to the said trust fund.

5. [*If the fund is chargeable with legacy or succession duty, state whether such duty or any part thereof has or has not been paid* (*ll*);] The said trust fund is liable to legacy duty. No part of such legacy duty has been paid.

Your petitioner therefore humbly prays, as follows:

1. That the costs of your petitioner (*m*) of this application may be taxed by the Taxing Master: as between solicitor and client.
2. That so much of the said £ B. Consolidated £3 per cent. annuities as with the said £ C. cash, and any dividends to accrue on the said annuities, will be sufficient to raise the said costs when taxed, and also the assessed amount, to be verified by affidavit, of the legacy duty payable in respect of the said trust fund, may be sold.
3. That out of the money to arise by such sale, the said costs may be paid to Mr. X. Y., your petitioner's solicitor; and the amount of the said legacy duty may, upon the requisition of the Commissioners of Inland Revenue, be transferred to the

(*kk*) See *ante* No. 1965, and note thereto.

(*l*) See Chancery Funds Amended Orders, 1874, rule 9.

(*ll*) *Ibid.*, rule 11.

(*m*) As to the costs of the trustees and the other persons served with the application, see Dan. Pr. 1795—1797; Seton, ed. 4, 498, 499.

account of the Receiver-General of Inland Revenue, at the Bank (*n*).

4. That the residue of the said Consolidated £3 per cent. annuities may be transferred to your petitioner C. D., spinster.

Or that [*&c.; Conclude as in* No. 1578 *ante; and add foot note,* No. 1579.]

2178. Summons for transfer and payment out of fund paid in under the Act (*o*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title, as in the trustee's affidavit: see ante* No. 2175.]

Let [*&c.; Continue as in* No. 865 *ante, to* noon] on the hearing of an application on the part of C. D., of [*residence and addition*]—*If so;* in the affidavit of E. F. [*Trustee*], filed in this matter the —— day of ——, 187—, named:

1. That [*Continue as in prayer of* No. 2177 *ante, to* spinster; *but substitute* applicant *for* petitioner; *and describe the fund and the credit to which it stands, in full, according to the Paymaster-General's voluntary certificate*].

The office of the applicant's solicitor, Mr. X. Y., situate at [*State where*], in the (county) of ——, is the place where the applicant may be served with any petition or summons, or notice of any proceeding or order of this Court, relating to the said trust fund.

Dated [*&c.; Conclude as in* No. 865 *ante*].

(*n*) See Chancery Funds Cons. Rules, 1874, rules 41, 57; note (*b*) to No. 2030, and note (*n*) to No. 2036 *ante.*

(*o*) See the notes to No. 2177 *ante.* For order in like case, see *Re Glover,* M. R. at Chambers, 18 Dec. 1866, Reg. Lib. A. 2797. As to the jurisdiction on summons, see Chancery Funds Amended Orders, 1874, rule 6. The first application after the payment in must be made by originating summons; see Dan. Pr. 1790. For the practice as to originating summonses, see *ante* Nos. 865—880, and notes thereto. As to the persons to be served with the summons, see Dan. Pr. 1791, 1792.

Section IV.—The Trustee Acts, 1850 and 1852 (*a*).

(*a*) 13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55. As to these Acts, see Dan. Pr. 1798—1832; Seton, ed. 4, 503—549; Morgan, 76—187. An application under these Acts is made by petition; 13 & 14 Vict. c. 60, s. 40; except where a judgment or order has been made for the sale or conveyance of lands, in which case an application for a vesting order, or for an order appointing a person to convey, is made by summons at Chambers; Cons. Ord. XXXV. rule 1 (4); Dan. Pr. 1825. As to who may apply, see 13 & 14 Vict. c. 60, s. 37; Dan. Pr. 1823. As to the persons upon whom the application must be served, see Dan. Pr. 1823, 1824. For forms of orders appointing new trustees and vesting lands in them, see Seton, ed. 4, 538—541, Nos. 1—3; for forms of orders appointing new trustees and vesting stock or *choses* in action in them, see *Ibid.*, 538—544, Nos. 1—9; for forms of orders vesting lands, or appointing persons to convey lands, without appointing trustees, see *Ibid.*, 503—508, Nos. 1—17; for forms of orders vesting stock or *choses* in action where no trustee is appointed, see *Ibid.*, 508—514, Nos. 18—32; for forms of orders declaring persons under disability or persons not in *esse* to be trustees and vesting their interests in, or appointing a person to convey their interests to, a purchaser or mortgagee, see *Ibid.*, 527—536, Nos. 1—20; and for forms of orders directing costs to be raised out of a fund, or out of rents, or by mortgage, see *Ibid.*, 514, No. 33; 544, No. 10. As to the effect of a vesting order, see *Mason* v. *Mason*, 7 Ch. D. 707. As to the stamp duties on orders made under these Acts, see the Stamp Act, 1870 (33 & 34 Vict. c. 97): amended by the 34 & 35 Vict. c. 4; Dan. Pr. 1831. The Commissioners of Inland Revenue have intimated to the Chancery Registrars that in their opinion the following descriptions of orders made under the Trustee Act, 1850, are chargeable under the Stamp Act, 1870, with the following duties:—(1.) Order appointing new trustees: one stamp of 10*s.* (2.) Order appointing new trustees, and vesting in them the right to transfer stock: one stamp of 10*s.* (3.) Order appointing new trustees, and vesting land in them: two stamps of 10*s.* each. (4.) Order appointing new trustees, and vesting in them the right to sue for *choses* in action: two stamps of 10*s.* each. When the *choses* in action are in the nature of a mortgage, bond, debenture, covenant, or foreign security, or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment, and the total amount thereby secured is under £2000, an *ad valorem* stamp at the rate of 6*d.* per £100 is to be substituted for the second stamp of 10*s.* (*Vide* Stamp Act, 1870, Schedule, Title, *Mortgage*, paragraph 3.) In no case when new trustees are appointed, and a vesting order made, are more than two 10*s.* stamps required. No stamp is required in respect of any order merely vesting the right to call for a transfer of, and to transfer, any stock; Registrars' Notice, March, 1871: W. N. (1871), Pt. II. 112.

2179.
Petition for vesting order, where trustee of lands is an infant, or out of the jurisdiction, or refuses or neglects to convey (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the trusts of an indenture, dated, *&c.*, and made between, *&c.*
And in the matter of The Trustee Act, 1850 [*Add, where applicable:*] and of the Act, 15th & 16th Vict. c. 55, intituled "An Act to extend the provisions of The Trustee Act, 1850."
To Her Majesty's High Court of Justice.
The humble petition of A. B., of, *&c.*, and C. D., of, *&c.*
Showeth as follows:
1. [*State the instrument creating the trust, and show that the hereditaments subject to the trust are now vested in* (1) *an infant trustee or mortgagee* (*c*); *or* (2) *a trustee who is out of the jurisdiction of the Court* (*d*); *or* (3) *a trustee who, for twenty-eight days after demand made upon him by a person entitled to require a conveyance of the lands, requiring him to convey the same, has wilfully refused or neglected to convey the same* (*e*).]
Your petitioners therefore humbly pray, that the said messuage or tenement and hereditaments subject to the trusts of the said indenture, may vest in the said A. B. and C. D. for the estate of the said X. Y. [*Trustee*] therein.
Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579 *ante.*]

2180.
Petition for vesting order, where trustee cannot be found, or it is not known whether he be living or dead, or he has died intestate and without an heir, or he has died and it is not known who is his heir or devisee (*f*).

[*Proceed as in* No. 2179 *ante, down to* as follows; *and continue thus:*]
1. [*State the instrument creating the trust, and show* (1) *that the trustee cannot be found* (*g*); *or* (2) *that it is not known whether the trustee be living or dead* (*h*); *or* (3) *that the trustee has died intes-*

(*b*) See 13 & 14 Vict. c. 60, ss. 7, 9, 10; 15 & 16 Vict. c. 55, s. 2; Dan. Pr. 1804, 1805, 1807, 1808. For orders in like case, see Seton, ed. 4, 503, No. 1; *Ibid.*, 504, No. 4; *Ibid.*, 508, No. 17. For form of order where a joint trustee is out of the jurisdiction, see *Ibid.*, 504, No. 5.
(*c*) See 13 & 14 Vict. c. 60, s. 7.
(*d*) *Ibid.*, ss. 9, 10.
(*e*) See 15 & 16 Vict. c. 55, s. 2.
(*f*) See 13 & 14 Vict. c. 60, ss. 9, 10, 14, 15; Dan. Pr. 1804, 1805, 1806, 1807. For orders in like case, see Seton, ed. 4, 504, No. 4; *Ibid.*, 505, No. 10; *Ibid.*, 506, No. 11. For form of order where a joint trustee cannot be found, see *Ibid.*, 504, No. 5.
(*g*) See 13 & 14 Vict. c. 60, ss. 9, 10.
(*h*) *Ibid.*, s. 14.

late and without an heir, or that he has died, and it is not known who is his heir or devisee (j).]

Your petitioners therefore humbly pray, that the said messuage or tenement and hereditaments subject to the trusts of the said indenture, may vest in the said A. B. and C. D.

[*If the trustee cannot be found, or it is not known whether he be living or dead, say:*] for the estate of the said X. Y. [*Trustee*] therein, or (if he be dead)

for the estate therein, which would now be vested in the said X. Y. [*Trustee*], if now living.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579 *ante.*]

2181.

Petition for vesting order, where it is uncertain which of several trustees was the survivor (*k*).

[*Proceed as in* No. 2179 *ante, down to* as follows; *and continue thus:*]

1. [*State the instrument creating the trust, and show that the hereditaments became vested in two or more trustees, and that it is uncertain which of such trustees was the survivor.*]

Your petitioners therefore humbly pray, that the said messuage or tenements and hereditaments subject to the trusts of the said indenture, may vest in the said A. B. and C. D. for the estate therein which would now be vested in the survivor of them, the said W. Y. and T. Z. [*Deceased trustees*], if such survivor were now living.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579 *ante.*]

2182.

Petition for vesting order, where lands are subject to contingent right in unborn person or class of persons (*l*).

[*Proceed as in* No. 2179 *ante, down to* as follows; *and continue thus:*]

1. [*State the instrument creating the trust, and show that the lands subject to the trust are subject to a contingent right in an unborn person or class of unborn persons, who, upon coming into existence, would in respect thereof become seised or possessed of such lands upon a trust.*]

Your petitioners therefore humbly pray, that the

(*j*) See 13 & 14 Vict. c. 60, s. 15.

(*k*) See 13 & 14 Vict. c. 60, s. 13; Dan. Pr. 1806. For order in like case, see Seton, ed. 4, 505, No. 9.

(*l*) See 13 & 14 Vict. c. 60, s. 16; Dan. Pr. 1807. For order in like case, see Seton, ed. 4, 506, No. 13.

said messuage or tenement and hereditaments subject to the trusts of the said indenture, may vest in the said A. B. and C. D. for the estate or estates therein, of which any unborn child or children [*Or*, issue] of the said X. Y. would, upon coming into existence, be seised upon trust as aforesaid.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579 *ante.*]

2183.

Petition for appointment of a person to convey (*m*).

[*Proceed as in* No. 2179 *ante, down to* as follows; *and continue thus:*]

1. [*Same as paragraph* 1 *of* No. 2179, *or* No. 2180, *or* No. 2181, *or* No. 2182 *ante.*]

Your petitioners therefore humbly pray, that the said A. B. may be appointed to convey the said messuage or tenement and hereditaments, subject to the trusts of the said indenture, for the estate of the said X. Y. [*Trustee*] therein [*or as may be; see prayer of* No. 2179, *or* No. 2180, *or* No. 2181, *or* No. 2182 *ante*]. And that the said A. B. may be ordered to convey the same accordingly.

Or that [*Continue as in* No. 1578 *ante; and add foot note,* No. 1579 *ante.*]

2184.

Petition for order releasing lands from contingent right in infant trustee or mortgagee, or in trustee out of jurisdiction, or who cannot be found, or in unborn person or class of persons (*n*).

[*Proceed as in* No. 2179 *ante, down to* as follows; *and continue thus:*]

1. [*State the circumstances showing that there is a contingent right in lands* (1) *in an infant trustee or mortgagee* (*o*); *or* (2) *in a trustee who is out of the jurisdiction of the Court, or cannot be found* (*p*); *or* (3) *in an unborn person or class of unborn persons, who, upon coming into existence, would in respect thereof become seised or possessed of the lands upon trust* (*q*).]

Your petitioners therefore humbly pray, that the

(*m*) See 13 & 14 Vict. c. 60, s. 20; Dan. Pr. 1809. For order in like case, see Seton, ed. 4, 507, No. 15. As to the effect of a conveyance under the order, see 13 & 14 Vict. c. 60, s. 20.

(*n*) See 13 & 14 Vict. c. 60, ss. 8, 11, 12, 16; Dan. Pr. 1804, 1806, 1807. For orders in like case, see Seton, ed. 4, 504, No. 2; *Ibid.*, 505, No. 6; *Ibid.*, 506, No. 12.

(*o*) See 13 & 14 Vict. c. 60, s. 8.

(*p*) *Ibid.*, ss. 11, 12.

(*q*) *Ibid.*, s. 16.

said messuage or tenement and hereditaments, subject to the trusts of the said indenture, may be wholly released from the said contingent right therein, to which the said X. Y. [*Trustee*] is entitled as aforesaid [*Or, if the trustee cannot be found, say:* to which the said X. Y., if now living, is entitled as aforesaid, or (if the said X. Y. be dead) to which he would now be entitled if now living; *Or, if the right is in an unborn person or class of persons, say:* to which the same are subject in any unborn child or children [*Or,* issue] of the said X. Y. as aforesaid].

Or that [*Continue as in* No. 1578 *ante; and add foot note,* No. 1579 *ante*].

2185.

Petition for order disposing of contingent right in infant trustee or mortgagee, or in trustee out of jurisdiction, or who cannot be found (*r*).

[*Proceed as in* No. 2179 *ante, down to* as follows; *and continue thus:*]

1. [*State the circumstances showing that there is a contingent right in lands* (1) *in an infant trustee or mortgagee* (*s*); *or* (2) *in a trustee who is out of the jurisdiction of the Court or cannot be found* (*t*).]

Your petitioners therefore humbly pray, that the said contingent right to which the said X. Y. [*Trustee*] is entitled as aforesaid [*Or, if the trustee cannot be found, say:* to which the said X. Y., if now living, is entitled as aforesaid, or (if he be dead) to which he would now be entitled if now living], may be disposed of to and vested in the said A. B. and C. D.

Or that [*Continue as in* No. 1578 *ante; and add foot note,* No. 1579].

2186.

Petition for appointment of a person to release or dispose of contingent right (*u*).

[*Proceed as in* No. 2179 *ante, down to* as follows; *and continue thus:*]

1. [*Same as paragraph* 1 *of* No. 2184 *or* No. 2185 *ante.*]

Your petitioners therefore humbly pray, that the

(*r*) See 13 & 14 Vict. c. 60, ss. 8, 11, 12; Dan. Pr. 1804, 1806. For orders in like case, see Seton, ed. 4, 504, No. 3; *Ibid.*, 505, No. 7. For form of order where a joint trustee entitled to a contingent right is out of the jurisdiction or cannot be found, see *Ibid.*, 505, No. 8.

(*s*) See 13 & 14 Vict. c. 60, s. 8.

(*t*) *Ibid.*, ss. 11, 12.

(*u*) See 13 & 14 Vict. c. 60, s. 20; Dan. Pr. 1809. For order in like case, see Seton, ed. 4, 507, No. 15. As to the effect of a release or disposition under the order, see 13 & 14 Vict. c. 60, s. 20.

said L. M. may be appointed to release [*Or*, to dispose of to the said A. B. and C. D.] the said contingent right in the said messuage or tenement and hereditaments, subject to the trusts of the said indenture, to which the said X. Y. [*Trustee*] is entitled as aforesaid [*or as may be: see the prayer of* No. 2184 *or* No. 2185 *ante*]. And that the said L. M. may be ordered to release [*Or*, to dispose of] the said contingent right accordingly.

Or that [*Continue as in* No. 1578 *ante; and add foot note,* No. 1579 *ante*].

2187. Petition for order vesting right to transfer stock and to receive dividends (*v*).

[*Proceed as in* No. 2179 *ante, down to* as follows; *and continue thus:*]

1. [*State the instrument creating a trust of stock, and show that the trustee or one of the trustees* (1) *is out of the jurisdiction of the Court, or cannot be found, or that it is uncertain whether he be living or dead* (*w*); *or* (2) *is an infant* (*x*); *or* (3) *neglects or refuses to transfer the stock, or to receive the dividends or income thereof for twenty-eight days next after a request in writing for that purpose by a person absolutely entitled thereto, or next after an order of the Court for that purpose shall have been served upon him* (*y*); *or* (4) *show that stock is standing in the sole name of a deceased person, and that his or her personal representative is out of the jurisdiction of the Court, or cannot be found, or that it is uncertain whether such personal representative be living or dead, or that such personal representative neglects or refuses to transfer the stock or to receive the dividends or income thereof for twenty-eight days next after a request in writing for that purpose by a person absolutely entitled thereto, or next after an order of the Court for that purpose shall have been served upon him* (*z*).]

Your petitioners therefore humbly pray, that the right to transfer the said £1,000 Consolidated £3 per cent. annuities [*or as may be*], and to receive any dividends now due, and to accrue due thereon, may vest in the said A. B. and C. D.

Or that [*Continue as in* No. 1578 *ante; and add foot note,* No. 1579 *ante*].

(*v*) See 13 & 14 Vict. c. 60, ss. 22—25; 15 & 16 Vict. c. 55, ss. 3, 4, 5; Dan. Pr. 1810—1814. For orders in like case, see Seton, ed. 4, 508, No. 19; *Ibid.*, 509, Nos. 20, 21; *Ibid.*, 510, No. 24; *Ibid.*, 511, Nos. 25, 26; *Ibid.*, 512, Nos. 28, 29; *Ibid.*, 513, Nos. 30, 31. As to the effect of the order, see 13 & 14 Vict. c. 60, s. 26; 15 & 16 Vict. c. 55, s. 6; Dan. Pr. 1814, 1827.

(*w*) See 13 & 14 Vict. c. 60, s. 22.

(*x*) See 15 & 16 Vict. c. 55, s. 3.

(*y*) See 13 & 14 Vict. c. 60, ss. 23, 24; 15 & 16 Vict. c. 55, s. 4.

(*z*) See 13 & 14 Vict. c. 60, s. 25; 15 & 16 Vict. c. 55, s. 5.

2188.
Petition for order directing officer of bank or company to transfer stock (*a*).

[*Proceed as in* No. 2179 *ante, down to* as follows ; *and continue thus :*]

1. [*Same as paragraph* 1 *of* No. 2187 *ante.*]

Your petitioner therefore humbly prays, that the Secretary, Deputy-Secretary, or Accountant-General for the time being of the Governor and Company of the Bank of England [*Or, describe the proper officer of the company or society, in the books whereof the stock is transferable*] may be ordered to transfer the said £1,000 Consolidated £3 per cent. annuities [*or as may be*] into the names of the said A. B. and C. D., to be held by them upon the trusts of the said indenture. And that the right to receive any dividends now due, or to accrue due on the said annuities [*or as may be*] until the transfer thereof may vest in the said A. B. and C. D.

Or that [*Continue as in* No. 1578 *ante ; and add foot note,* No. 1579 *ante*].

2189.
Petition for order vesting right to sue for or recover chose in action (*b*).

[*Proceed as in* No. 2179 *ante, down to* as follows ; *and continue thus :*]

1. [*State the instrument creating a trust of a chose in action, and show that the trustee or one of the trustees* (1) *is out of the jurisdiction of the Court, or cannot be found, or that it is uncertain whether he be living or dead* (*c*) *; or* (2) *neglects or refuses to sue for or recover such chose in action, or any interest in respect thereof, for twenty-eight days next after a request in writing for that purpose by a person absolutely entitled thereto, or next after an order of the Court for that purpose shall have been served upon him* (*d*).]

Your petitioners therefore humbly pray, that the right to sue for or recover the said sum of £——, and any interest in respect thereof,

Or, the right to sue for or recover any interest in respect of the said sum of £——,

may vest in the said A. B. and C. D. as trustees of the said indenture.

Or that [*Conclude as in* No. 1578 *ante ; and add foot note,* No. 1579 *ante*].

(*a*) See 13 & 14 Vict. c. 60, s. 20 ; Dan. Pr. 1809, 1810. For order in like case, see Seton, ed. 4, 508, No. 18.

(*b*) See 13 & 14 Vict. c. 60, ss. 22, 24; 15 & 16 Vict. c. 55, s. 4 ; Dan. Pr. 1810—1813. For orders in like case, see Seton, ed. 4, 510, Nos. 22, 23 ; *Ibid.*, 511, No. 26 ; *Ibid.*, 514, No. 32. As to the effect of the order, see 13 & 14 Vict. c. 60, s. 27 ; Dan. Pr. 1815.

(*c*) See 13 & 14 Vict. c. 60, s. 22.

(*d*) See 13 & 14 Vict. c. 60, ss. 23, 24 ; 15 & 16 Vict. c. 55, s. 4.

2190. Petition for appointment of new trustee, and for vesting order consequent thereon (*e*).

Proceed as in No. 2179 *ante, down to* as follows ; *and continue thus :*]

1. [*State the creation of the trust and show what property is subject to the trust, that it is expedient to appoint a new trustee or new trustees* [*as that there is no existing trustee* (*f*)*; or that a trustee has been convicted of felony* (*g*)*; or is an infant* (*h*)*; or has become bankrupt* (*k*)*; or is permanently resident abroad* (*l*)], *and that it is inexpedient, difficult, or impracticable to appoint a new trustee or trustees without the assistance of the Court.*]

Your petitioners therefore humbly pray as follows :

1. That the said C. D. may be appointed trustee of the said indenture dated, *&c.*, in substitution for the said X. Y. [*Trustee retiring, deceased, or under disability*], and in addition to the said A. B. [*Continuing trustee*].

2. That the said messuage or tenement and hereditaments, subject to the trusts of the said indenture, may vest in the said C. D., jointly with the said A. B., as such trustees as aforesaid, for the estate therein now vested in the said A. B. and X. Y. [*or as may be ; see ante* Nos. 2179 *to* 2182].

3. That the right to call for a transfer of, and to transfer, into their own names, the said £1,000 Consolidated £3 per cent. annuities [*or as may be*], and to receive any dividends now due and to accrue due thereon, may vest in the said A. B. and C. D. as such trustees as aforesaid.

4. That the right to sue for or recover the said sum of £1,000 [*Or*, any chose in action subject to the trusts of the said indenture ; *or as may be*], or any interest in respect thereof, may vest in the said A. B. and C. D. as such trustees as aforesaid.

Or that [*Continue as in* No. 1578 *ante ; and add foot note,* No. 1579 *ante*].

(*e*) See 13 & 14 Vict. c. 60, ss. 32—36 ; 15 & 16 Vict. c. 55, ss. 8, 9 ; Dan. Pr. 1818—1822. For orders in like case, see Seton, ed. 4, 538—544, Nos. 1—9. As to the effect of an order appointing new trustees, see 13 & 14 Vict. c. 60, s. 33 ; 23 & 24 Vict. c. 145, s. 27 ; and see 22 & 23 Vict. c. 35, ss. 14, 15. As to the effect of an order vesting lands, see 13 & 14 Vict. c. 60, s. 34. As to the effect of an order vesting the right to call for a transfer of stock, see 13 & 14 Vict. c. 60, s. 26 ; 15 & 16 Vict. c. 55, s. 6. As to the effect of an order vesting the right to sue for or recover a *chose* in action, see 13 & 14 Vict. c. 60, s. 27.

(*f*) See 15 & 16 Vict. c. 55, s. 9.

(*g*) *Ibid.*, s. 8.

(*h*) See *Re Gartside*, 1 W. R. 196 ; Dan. Pr. 1821.

(*k*) See *Re Barker*, 1 Ch. D. 43.

(*l*) See *Re Bignold*, L. R. 7 Ch. 223.

2191.
Evidence in support of petition to appoint new trustees (*m*).

[*See the following forms, ante, which can be readily adapted :*]
Affidavit of eligibility of proposed new trustee ; No. 1088.
His consent to act ; No. 1089.
Affidavit verifying signature thereto ; No. 1090.

2192.
Summons for vesting order, where judgment or order for sale has been made (*n*).

Formal parts : see ante No. 881.
on the part of [*State whom, as thus :*] A. B., of, *&c.*, who, by the Chief Clerk's certificate [*Or*, by the order] made in this cause and dated the —— day of ——, 187--, has been allowed the purchaser of the hereditaments (comprised in lot 1 of the estates) by the judgment [*Or*, order] made in this cause and dated the —— day of ——, 187—, directed to be sold : that the said hereditaments may vest in the said A. B. for the estate therein of the defendant X. Y. [*or as may be*], who is an infant [*Or*, out of the jurisdiction of this Court ; *or as may be ; state the disability or circumstance which renders the order necessary*].

2193.
Summons for appointment of a person to convey, in like case (*o*).

[*Proceed as in* No. 2192 *ante, down to* directed to be sold ; *and continue thus :*] that C. D., of, *&c.*, may be appointed to convey the said hereditaments to the said A. B., or as he shall direct, for the estate therein of the defendant X. Y. [*or as may be*], who is an infant [*or as may be ; see ante* No. 2192]. And that the said C. D. may be ordered to convey the same accordingly.

(*m*) See Dan. Pr. 1825, 1826.

(*n*) See 13 & 14 Vict. c. 60, s. 29 ; 15 & 16 Vict. c. 55, s. 1 ; Dan. Pr. 1816. The application is made by summons at Chambers ; Cons. Ord. XXXV. rule 1 (4) ; Dan. Pr. 1817, 1825. For orders in like case, see Seton, ed. 4, 534, No. 16 ; *Ibid.*, 535, Nos. 17, 18. As to the effect of the order, see 15 & 16 Vict. c. 55, s. 1.

(*o*) See note (*n*) to No. 2192 *ante ;* and see 13 & 14 Vict. c. 60, s. 20 ; Dan. Pr. 1809. For order in like case, see Seton, ed. 4, 534, No. 16 ; and see *Ibid.*, 527, No. 1 ; *Ibid.*, 528, No. 3 ; *Ibid.*, 532, No. 10 ; *Ibid.*, 533, Nos. 13, 14 ; *Ibid.*, 536, No. 19. As to the effect of a conveyance under the order, see 13 & 14 Vict. c. 60, s. 20 ; 15 & 16 Vict. c. 55, s. 1.

2194.
Summons for a vesting order, where a judgment or order for conveyance has been made (*p*).

Formal parts : see ante No. 881.
on the part of [*State whom*], that it may be declared that the defendant X. Y. [*or as may be*], who is an infant [*or as may be ; see ante* No. 2192], is a trustee within the meaning of the Trustee Act, 1850, of the lands and hereditaments by the judgment [*Or*, order] made in this cause and dated the —— day of ——, 187—, directed to be conveyed [*or as may be*]. And that the said lands and hereditaments may vest in the applicant for the estate therein of the said X. Y. [*or as may be ; see ante* Nos. 2179 *to* 2182].

2195.
Summons for appointment of person to convey, in like case (*q*).

[*Proceed as in* No. 2194 *ante, down to* directed to be conveyed ; *and continue thus :*] And that C. D., of, *&c.*, may be appointed to convey the said hereditaments to the applicant, or as he may direct, for the estate therein of the said X. Y. [*or as may be ; see ante* Nos. 2179 *to* 2182]. And that the said C. D. may be ordered to convey the same accordingly.

2196.
Consent of lord or lady of a manor to an order vesting a copyhold estate (*r*).

In the High Court of Justice,
Chancery Division.
[*Short title, and reference to the record.*]

I, A. B., of [*residence and addition*], the lord [*Or*, lady] of the manor of C., in the county of D., consent to an order being made by the High Court of Justice, to vest in E. F. the copyhold or customary lands holden of the said manor, whereof G. H. is the tenant on the Court Rolls thereof : for all the estate of the said G. H. therein [*or as may be*].

A. B.

(*p*) See 13 & 14 Vict. c. 60, s. 30 ; Dan. Pr. 1817. The application is made by summons at Chambers ; Cons. Ord. XXXV. rule 1 (4) ; Dan. Pr. 1825. For order in like case, see Seton, ed. 4, 536, No. 20.

(*q*) See note (*p*) to No. 2194 *ante ;* and see 13 & 14 Vict. c. 60, s. 20 ; Dan. Pr. 1809. For orders in like case, see Seton, ed. 4, 528—531, Nos. 5—9. As to the effect of a conveyance under the order, see 13 & 14 Vict. c. 60, s. 20.

(*r*) See 13 & 14 Vict. c. 60, s. 28 ; Dan. Pr. 1815, 1816. For order under s. 28, see Seton, ed. 4, 507, No. 28.

2197.
Affidavit verifying the signature thereto.

Formal parts: see ante No. 693.

1. I saw A. B., the lord [*Or*, lady] of the manor of C., in the county of D., sign the paper writing now produced and shown to me, and marked F. (*s*), and purporting to be his [*Or*, her] consent to a vesting order being made in this cause [*Or*, matter].

Or, I know and am well acquainted with the handwriting of A. B., the lord [*Or*, lady] of the manor of C. in the county of D.: having seen him [*Or*, her] write.

2. The name or signature "——," set and subscribed to the said paper writing marked F.,

Or, to the paper writing now produced, *&c.*, and purporting to be [*&c., as above*],

is of the proper handwriting of the said A. B.

Section V.—Parliamentary Deposits Act (*g*).

2198.
Petition for investment of deposit money (*h*).

In the matter of *Ex parte* the undertaking of the A. B. Railway bill [*or as may be*].

And in the matter of the Act 9th and 10th Victoria, chapter 20, intituled "An Act to amend an Act of the second year of her present Majesty for providing for the custody of certain moneys paid, in pursuance of the Standing Orders of Parliament, by subscribers to works

(*s*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*g*) 9 & 10 Vict. c. 20; see Dan. Pr. 1856—1861; Morgan, 61—63. For the Standing Orders of Parliament as to clauses to insure the completion of public works, see Dan. Pr. 1859, 1860; and see the Railways Act, 1867 (30 & 31 Vict. c. 127), s. 34; and the Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), s. 6; Dan. Pr. 1860, 1861.

(*h*) See 9 & 10 Vict. c. 20, s. 4; Dan. Pr. 1857. No order is required for the payment of the money into Court, but the Chancery Paymaster will issue a direction to the bank to receive the deposit, upon a warrant or order signed by one of the clerks in the office of the Clerks of Parliament (where the money is required to be deposited by a Standing Order of the House of Lords), or by one of the clerks of the Private Bill Office of the House of Commons (where the money is required to be deposited by a Standing Order of the House of Commons), being lodged at the Chancery Pay Office; 9 & 10 Vict. c. 20, ss. 2, 3; Dan. Pr. 1856, 1857. For the mode of payment of money into Court, see note (*o*) to No. 1974 *ante*. The money so paid in will not be placed on deposit; Chancery Funds Cons. Rules, 1874, rule 72. As to the investment of money in Court, see note (*d*) to No. 1998 *ante*. The Court will allow the money to be invested in India Stock if desired; *Re Southwold Railway Co.'s Bill*, 1 Ch. D. 697. As to transferring stock into Court instead of paying in money, see 9 & 10 Vict. c. 20, s. 3; Dan. Pr. 1857. For the practice on transferring stock into Court, see note (*a*) to No. 1975 *ante*.

or undertakings to be effected under the authority of Parliament."

To Her Majesty's High Court of Justice.

The humble petition of A. B., of, *&c.*, C. D., of, *&c.*, and E. F., of, *&c.*

Showeth as follows:

1. In the present session, your petitioners introduced a bill into Parliament for authority to construct a railway from C. to D. [*or as may be*].

2. Pursuant to the Standing Orders of Parliament, and of a warrant or order issued in pursuance thereof, your petitioners on or about the ——, 187—, paid the sum of £—— into Court to the credit of *Ex parte* the undertaking of the A. B. Railway bill [*or as may be*].

3. The said sum remains in Court on the said credit.

Your petitioners therefore humbly pray, that the said sum of £——, cash in Court to the credit of [*&c., as above*], may be invested in Consolidated £3 per cent. annuities [*or as may be*]: and that the dividends to accrue on such annuities [*or as may be*] may be from time to time invested in like annuities.

Or that [*&c.; Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

2199. Petition for repayment of a cash deposit, or retransfer of stock purchased therewith (*i*).

[*Proceed as in* No. 2198 *ante, to end of paragraph* 2.]

3. [*If the deposit has not been invested, add paragraph* 3, No. 2198.]

[*But, if it has been invested, say:*] Pursuant to an order dated the ——, 187—, the said £—— was afterwards invested in Consolidated £3 per cent. annuities; and the same, with the accumulations of dividends thereon, is now represented by the sums of £—— like annuities, and £—— cash in Court to the credit aforesaid [*or as may be*].

4. [*State the ground for requiring repayment; as thus:*] The bill referred to in paragraph 1 of this petition has received the Royal Assent. The Act founded thereon is the [*Set out the short title*]; and the said Act authorises the said undertaking to be made.

Your petitioners therefore humbly pray, that the said £—— Consolidated £3 per cent. annuities, and £—— cash, in Court to the credit of [*State*

(*i*) See 9 & 10 Vict. c. 20, s. 5; Dan. Pr. 1858. For orders in like case, see *Re Barry Railway Company*, V.-C. W., 21 Dec. 1866, Reg. Lib. A. 2800; *Re Peterborough Water Bill*, V.-C. S., 1 Aug. 1867, Reg. Lib. B. 2000. For the practice on payment out of Court, see note (*b*) to No. 2030 *ante*; and for the practice on transfer out of Court, see note (*q*) to No. 2037 *ante*.

what], may be respectively transferred and paid to your petitioners [*Naming them*].

Or, to E. F., of [*residence and addition*], and G. H., of, *&c.*, for and on behalf of your petitioners; and whom your petitioners hereby appoint for that purpose.

Or that [*&c.; Conclude as in* No. 1578 *ante; and add foot note*, No. 1579].

2200

Affidavit verifying signature of Chairman of Committees of House of Lords, or of Speaker or Deputy Speaker of House of Commons (*k*).

Formal parts: see ante No. 693.

1. I saw the Right Honourable the Lord Redesdale, Chairman of Committees of the House of Lords,

Or, the Right Honourable H. B., Speaker of the House of Commons,

Or, J. R., esquire, Deputy Speaker of the House of Commons (*l*).

sign the certificate or paper writing now produced and shown to me, and marked A. (*m*), and purporting to be [*State shortly what; as thus:*] a certificate dated the ——, 187—, that on the —— day of ——, the Royal Assent was given to an Act of Parliament, intituled, An Act, *&c.*

Or, 1. I know and am well acquainted with the handwriting of the Right Honourable [*&c.; as above*]: having seen him write.

2. The name or signature "——," set and subscribed to the said paper writing marked A.,

Or, to the paper writing now produced, *&c.*, and purporting to be, *&c.* [*as above*],

is of the proper handwriting of the said Lord Redesdale [*or as may be*].

2201.

Affidavit verifying the signatures to a petition (*n*).

Formal parts: see ante No. 693.

1. On the —— day of ——, 187—, I saw A. B. and C. D., respectively named in the paper writing now produced and shown to me, and marked A. (*m*), and purporting to be their petition in this matter, duly sign the said petition.

2. The names or signatures "——," and "——," respectively set and subscribed at the foot of the said petition, are of the respective proper handwriting of the said A. B. and C. D.

(*k*) See Dan. Pr. 1858; *Re Barry Railway Company*, V.-C. W. 21 Dec. 1866, Reg. Lib. A. 2800.

(*l*) As to the Deputy Speaker, see *Ex parte Stocksbridge Railway Bill*, L. R. 2 Eq. 364; 12 Jur. N. S. 465, M. R.; Dan. Pr. 1858, note (*d*).

(*m*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*n*) See Dan. Pr. 1858; *Ibid.*, 1859, note (*c*); and *Re London, Chatham, and Dover Railway Company*, V.-C. K., 20 July, 1866.

SECTION VI.—THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (*j*).

2202. Request for a direction for payment in under sec. 69 (*k*).

Chancery.

To the Paymaster-General.

A direction is requested, pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, and the Act [*Cite the special Act or Acts under which the land is taken*], to enable A. B., C. D., &c. [*Name the promoters of the undertaking*], to pay into Court the sum of £—— to the credit of "*Ex parte* A. B., C. D.,

(*j*) 8 & 9 Vict. c. 18; amended by the Lands Clauses Consolidation Acts, 1860 (23 & 24 Vict. c. 106) and 1869 (32 & 33 Vict. c. 18); see Dan. Pr. 1861—1886; Morg. 31—61. The Lands Clauses Consolidation Act, 1845, and the Acts amending the same, are incorporated with the Elementary Education Act, 1870 (33 & 34 Vict. c. 75); see that Act, sec. 20 (1); and in construing the Lands Clauses Consolidation Acts with that Act, the "special Act" is to be construed to mean the Elementary Education Act, and the "promoters of the undertaking" to mean the School Board, and "land" to include any right over land; 33 & 34 Vict. c. 75, s. 20 (1); for provisions as to the publication and service of notices, see *ib.*, s. 20 (2). The provisions of the Lands Clauses Consolidation Act, 1845, with respect to purchase money or compensation coming to parties having limited interests, or prevented from treating or not making title (8 & 9 Vict. c. 18, ss. 69—80) also apply to the payment and application of the purchase money or compensation to be paid by the local authority in respect of lands taken in pursuance of "The Artisans and Labourers Dwellings Improvement Act, 1875" (38 & 39 Vict. c. 36), where it appears to the local authority that a party claiming any right to or interest in the lands taken is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or where the title to such lands, estate, or interest is not satisfactorily deduced, or where such person refuses to produce his title, or where no claim for compensation in respect of such lands, or of any estate or interest therein, has been made within one year after the local authorities have taken possession, or where a person to whom any purchase-money or compensation is payable refuses to accept the same; 38 & 39 Vict. c. 36, s. 19; and Sched. (20) and (21). In the application of the provisions of the Lands Clauses Consolidation Act, 1845, to the Artisans and Labourers Dwellings Improvement Act, 1875, the latter Act is to be deemed the "special Act," and the local authority are to be deemed to be the "promoters of the undertaking"; 38 & 39 Vict. c. 36, s. 19 (3). As to the deposit in Court, where the local authority are desirous of entering upon lands before they would otherwise be entitled, under the provisions of the Artisans and Labourers Dwellings Improvement Act, 1875, to enter thereon, of a sum to be certified by an arbitrator, and as to the interim investment and ultimate application of such sum, see 38 & 39 Vict. c. 36, Sched. (24) and (25), the provisions whereof are similar to those of the 8 & 9 Vict. c. 45, ss. 85, 86, 87.

(*k*) 8 & 9 Vict. c. 18, ss. 69, 73; Chancery Funds Cons. Rules, 1874, rule 32; Dan. Pr. 1862; Morg. 34—36; and where the lands are taken under the Artisans and Labourers Dwellings Improvement Act, 1875, see 38 & 39 Vict. c. 36, s. 19, and Sched. (20); and see *ante*, note (*j*). For the mode of making a payment into Court, see note (*o*) to No. 1974 *ante*.

&c. [*Name the promoters*]. In the matter of the Act [*Cite the special Act*]. The account of lands at, *&c.*, whereof L. M. is tenant for life [*or as may be; add some words briefly expressive of the nature of the disability to sell and convey, by reason whereof the money is paid into Court* (*l*)]," being the amount of the purchase-money [*Or*, compensation] agreed [*Or*, awarded] to be paid for land at, *&c.*, in which L. M. is interested as tenant for life [*or as may be; specify the nature of the disability to sell and convey* (*l*)], and which the said L. M. is unable to sell and convey except under the powers of the said Acts.

Dated —— day of ——, 187—.

[*Name and address of solicitor for the promoters; see ante* No. 92.]

2203.

Request for a direction for payment in under sec. 76 (*m*).

Chancery.

To the Paymaster-General.

A direction is requested, pursuant to the 76th section of the Lands Clauses Consolidation Act, 1845, and the Act [*Cite the special Act or Acts under which the land is taken*], to enable A. B., C. D., *&c.* [*Name the promoters of the undertaking*], to pay into Court the sum of £—— to the credit of "In the matter of the Act [*Cite the special Act*]. The account of L. M. [*Describe so far as the promoters of the undertaking can do, the parties in respect of whose interest in the lands taken the money is paid into Court* (*n*)]," being the amount of the purchase-money [*Or*, compensation] agreed [*Or*, awarded] to be paid for land at, *&c.* [*Or*, for the interest of the said L. M. in lands at, *&c.*], which the said L. M. refuses to convey [*Or*, release] as directed by the said A. B., C. D., *&c.* [*or as may be; specify concisely the reason for paying the purchase-money or compensation into Court* (*n*).]

Dated —— day of ——, 187—.

[*Name and address of solicitor for the promoters; as in* No. 92 *ante.*]

2204.

Request for a direction for payment in under sec. 85 (*o*).

Chancery.

To the Paymaster-General.

A direction is requested, pursuant to the 85th section of the Lands Clauses Consolidation Act, 1845, and the Act [*Cite the special Act or Acts under which the land is taken*], to enable A. B., C. D., *&c.* [*Name the promoters of the undertaking*], to pay into

(*l*) Chancery Funds Cons. Rules, 1874, rule 32.

(*m*) 8 & 9 Vict. c. 18, s. 76; Dan. Pr. 1872, 1873; Morg. 45; and where the lands are taken under the Artisans and Labourers Dwellings Improvement Act, 1875, see 38 & 39 Vict. c. 36, s. 19, and Sched. (20) and (21); and see *ante*, note (*j*) at p. 1183. For the mode of making a payment into Court, see note (*o*) to No. 1974 *ante*.

(*n*) See *Ibid.*

(*o*) 8 & 9 Vict. c. 18, ss. 85, 86; 30 & 31 Vict. c. 127, s. 36; Dan. Pr. 1884, 1885; Morg. 58, 59; and where the lands are taken under the Artisans and

Court the sum of £—— to the credit of "In the matter of the Act [*Cite the special Act*]. The account of L. M. [*Name the parties interested in or entitled to sell and convey the lands entered upon* (*p*)]," being the amount of the purchase-money [*Or*, compensation] claimed by the said L. M. [*Name the parties interested or entitled, as above*], in respect of land at, *&c.*, which the said L. M. is entitled to sell and convey [*Or*, in respect of the interest of the said L. M. in land at, *&c.*],

Or, being the sum duly determined by a surveyor under the said section to be the value of lands at, *&c.*, which the said L. M. is entitled to sell and convey [*Or*, to be the value of the interest of the said L. M. in lands at, *&c.* (*q*)].

And which lands the said A. B., C. D., *&c.*, are desirous of entering upon and using under the said section.

Dated —— day of ——, 187—.

[*Name and address of solicitor for the promoters; as in* No. 92 *ante.*]

2205. Petition for interim investment of deposited money, and payment of income to a tenant for life (*r*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of [*Describe the particular will or settlement affecting the lands; as thus:*] the will of A. B., deceased.

And in the matter of the [*Short title of the Special Act*].

And in the matter of the Lands Clauses Consolidation Act, 1845 (*t*).

To Her Majesty's High Court of Justice.

The humble petition of C. D., of [*residence and addition*].

Showeth as follows:

[*State, succinctly, the interest of the petitioner in the land taken;*

Labourers Dwellings Improvement Act, 1875, see 38 & 39 Vict. c. 36, s. 19, and Sched. (24) and (25); and see *ante*, note (*j*) at p. 1183. For the mode of making a payment into Court, see note (*o*) to No. 1974 *ante*.

(*p*) 8 & 9 Vict. c. 18, s. 86.

(*q*) 8 & 9 Vict. c. 18, s. 85; 30 & 31 Vict. c. 127, s. 36.

(*r*) See 8 & 9 Vict. c. 18, s. 70; Dan. Pr. 1866—1869; Morg. 39, 40; and, where the lands have been taken under the Artisans and Labourers Dwellings Improvement Act, 1875, see 38 & 39 Vict. c. 36, s. 19, and Sched. (20). As to who may petition and the persons to be served, see Dan. Pr. 1866. For forms of orders, see Seton, ed. 3, 1069, 1070. The form may easily be adapted to the case where the money has been paid in under s. 76; see 8 & 9 Vict. c. 18, s. 78; Dan. Pr. 1872, 1873; Morg. 45, 46; 38 & 39 Vict. c. 36, s. 19, and Sched. (20) and (21); to the case where the money has been paid in under s. 85; see 8 & 9 Vict. c. 18, s. 87; Dan. Pr. 1884, 1885; Morg. 58—61; and to the case where it has been paid in under 38 & 39 Vict. c. 36, Sched. (24) and (25).

(*t*) As to the title of the petition, see Dan. Pr. 1868.

as thus :] 1. The above-named A. B., by her last will dated ——, 187—, devised all her real estate whatsoever and wheresoever unto your petitioner, for his life ; and after his decease, to all the sons of your petitioner who should be living at the time of his death, as tenants in common in fee.

2. The said testatrix died on, *&c.*, without having altered or revoked her said will ; and E. F., the sole executor thereof, duly proved such will in the Principal Registry of the Probate Division of Her Majesty's High Court of Justice on, *&c.*

[*State how the settled land has been taken under a Parliamentary power ; as thus :*] 3. By the M. Railway Act, 1866 : which incorporated the Lands Clauses Consolidation Act, 1845 : the M. Railway Company were authorised to make the railway therein mentioned.

4. The said Company, in exercise of the powers vested in them by the said Acts, or one of them, gave notice to your petitioner that they required, for the purposes of their said undertaking, certain lands situate at, *&c.*, forming part of the real estate so devised to your petitioner for his life as aforesaid ; and that the said Company desired to treat for the purchase thereof.

5. Your petitioner not being able to agree with the said Company as to the amount to be paid as the purchase-money or compensation for the said lands, the sum of £ A. was duly settled and determined by arbitration to be the amount thereof.

[*State the payment into Court ; as thus :*] 6. On the ——, 187—, the said Company paid the said sum of £ A. into Court to the credit of [*State the title of the account correctly, from the Paymaster-General's certificate*] : which sum is now standing to the like credit.

[*State the conveyance to the company, if executed, or other ground for the application ; as thus :*] 7. By an indenture dated, *&c.*, and made between your petitioner of the one part, and the said M. R. Company of the other part, your petitioner conveyed the said lands to the said Company, their successors and assigns.

Your petitioner therefore humbly prays as follows :

1. That the said sum of £ A. cash in Court to the credit of [*State what*] may be invested in Consolidated £3 per cent. annuities, and may when so invested be carried over to the credit of the said matter, to an account to be entitled "The account of the devisees under the will of A. B." [*or as may be*].

2. That the dividends as they accrue, during the life of your petitioner C. D., on the said annuities so to be purchased may be from time to time paid to your petitioner C. D. until further order.

3. That, pursuant to the 80th section of the Lands Clauses Consolidation Act, 1845 (*u*), the said M. R.

(*u*) As to the costs payable under s. 80, see Dan. Pr. 1874—1882; Morg. 47—56. For form of order under s. 80, see Seton, ed. 3, 1072, No. 19.

Company may be ordered to pay to your petitioner his costs, as thereby provided for: including therein all reasonable charges and expenses of and incident to the purchase of the said lands by the said Company, and of the conveyance thereof to them, and of this application, and of all proceedings relating thereto [*or as may be*]: such costs, charges, and expenses to be taxed by the Taxing Master, in case the parties differ.

Or that [*&c.: Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

2206. Petition to approve of investment in land of deposited money (*x*).

[*Proceed as in* No. 2205 *ante, to* as follows:]

1. [*State, succinctly, the interest of the petitioner in the land taken; the taking of such land; the ascertainment and payment into Court of the purchase money or compensation; and the conveyance to the Company, &c.: see ante* No. 2205 *paragraphs* 1—7.]

[*If the money has been invested, state so; as thus:*] 8. By an order dated the ——, 187—, the said sum of £ A. was directed to be invested in Consolidated £3 per cent. annuities; and the dividends to accrue, during the life of your petitioner, on the annuities so to be purchased, were directed to be paid to him until further order. Pursuant to the said order, the said £ A. was invested in £ B. Consolidated £3 per cent. annuities, and the

(*x*) As to the application of purchase money or compensation paid into Court under 8 & 9 Vict. c. 18, ss. 69, 73, see 8 & 9 Vict. c. 18, s. 69; Dan. Pr. 1862—1866; Morgan, 34—39; *Re Hobson's Trusts*, 7 Ch. D. 708. As to who may apply, see 8 & 9 Vict. c. 18, s. 70; Dan. Pr. 1866, 1867; as to the mode in which the application is made, see Dan. Pr. 1868; as to the service of the petition, see Dan. Pr. 1868; as to the evidence in support, see Cons. Ord. XXXIV. 3; Dan. Pr. 1867; and *post* No. 2209, and note thereto. For forms of orders, see Seton, ed. 3, 1063—1068, Nos. 8—13. As to allotting compensation to a person having a partial estate, see 8 & 9 Vict. c. 18, s. 73; Dan. Pr. 1870; Morgan, 41, 42; for forms of orders, see Seton, ed. 3, 1068, No. 11; *Ibid.*, 1070, No. 14; *Ibid.*, 1071, No. 16. As to the application of purchase-money paid into Court in respect of a lease, or other estate less than the fee, or of a reversion, see 8 & 9 Vict. c. 18, s. 74; Dan. Pr. 1871; Morgan, 42, 43; for forms of orders, see Seton, ed. 3, 1071, Nos. 17, 18. As to the application of purchase-money paid into Court under s. 76, see 8 & 9 Vict. c. 18, s. 78; Dan. Pr. 1873, 1874; Morgan, 46, 47. As to the application of a deposit made under s. 85, see 8 & 9 Vict. c. 18, s. 87; Dan. Pr. 1884, 1885; Morg. 60, 61; for form of order in like case, see Seton, ed. 3, 1074, 1075. As to the costs of such applications, see 8 & 9 Vict. c. 18, s. 80; Dan. Pr. 1874—1882, 1885; Morg. 47—56, 60. As to the application of purchase-money or compensation paid into Court, or of a deposit in Court, under the Artisans and Labourers Dwellings Improvement Act, 1875, see 38 & 39 Vict. c. 36, s. 19, and Sched. (20), (21), and (25).

same are now in Court to the credit of [*State what: as in the Paymaster-General's voluntary certificate*].

[*State the investment proposed to be made; as thus:*] 9. Your petitioner, on behalf of the parties interested under the said will [*or as may be*], lately entered into an agreement: conditional on the approval thereof by this honourable Court: with G. H., of, *&c.*, dated, *&c.*, for the purchase from the said G. H., for the sum of £ C., of certain freehold hereditaments belonging to him situate at ——, and comprising about —— acres.

10. The said proposed purchase is a fit and proper investment of the sum of £ C., in accordance with the trusts of the said will [*or as may be*]; and your petitioner is desirous that the same should be approved by this honourable Court on behalf of the persons interested under the said will [*or as may be*], and that the said sum of £ C. should be raised out of the said £ A. cash [*Or*, £ B. Consolidated £3 per cent. annuities].

Your petitioner therefore humbly prays as follows:

1. That the said proposed purchase of the said hereditaments may be approved as a proper investment of the said sum of £ C.

2. That the usual inquiry may be ordered to be made as to the title to the said hereditaments.

3. That in case such title shall be approved, a proper conveyance of the said hereditaments to the uses of the said will [*or as may be*], may be directed to be settled.

4. That, upon the due execution thereof by all proper parties, the said sum of £ C. may be directed to be paid out of the said £ A. cash

Or, may be directed to be raised out of the said sum of £ B. Consolidated £3 per cent. annuities; and be paid

to such person or persons as shall be certified to be entitled to receive the same.

5. That

the residue of the said £ A. cash may be invested in Consolidated £3 per cent. annuities, and when so invested may be carried over to the credit of the said matter, to an account to be entitled "The account of," *&c.*; and that

the rents and profits of the said hereditaments, after the completion of the purchase thereof, and the dividends as they accrue on the residue of the said annuities, after the aforesaid sale thereout,

Or, as they accrue on the annuities so to be purchased,

during the life of your petitioner, may be paid to your petitioner until further order.

6. That, pursuant to the 80th section of the Lands Clauses Consolidation Act, 1845 (*u*), the said M. R.

(*u*) See note (*u*) to No. 2205 *ante*.

Company may be ordered to pay to your petitioner his costs, as thereby provided for: including therein all reasonable charges and expenses of and incident to the said investment in the purchase of the said hereditaments, and of this application, and of all proceedings relating thereto [*or as may be*]: such costs, charges and expenses to be taxed by the Taxing Master, in case the parties differ.

Or that [*&c.: Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

2207. Summons for payment of income of interim investment to a succeeding incumbent (*y*).

Formal parts: see ante No. 881.

on the part of C. D., of [*residence and addition*]:

1. That out of the £ A. cash in Court to the credit of [*Describe the account: as in the Paymaster-General's voluntary certificate*], the sum of £ B. may be paid to E. F., the legal personal representative of A. B., in the order dated the ——, 187—, named, in discharge of the proportion which accrued between the —— day of ——, 187—, and the day of the death of the said A. B. on the ——, 187—, of the half year's dividends, which became due on the ——, 187—, on the £ C. Consolidated £3 per cent. annuities in Court to the like credit.

2. That the sum of £ D., residue of the said £ A., and also the dividends as they hereafter accrue due on the said £ C. Consolidated £3 per cent. annuities, may be paid to the applicant C. D., as rector of the parish of E. [*or as may be*], and to his successor, the rector of the said parish [*or as may be*] for the time being, until further order.

2208. Summons for interim investment, and payment of income, of deposit made under the Courts of Justice Concentration (Site) Act, 1865 (*z*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

[*Title, as in* No. 2205 *ante: describing the Special Act thus:*] And in the matter of the Courts of Justice Concentration (Site) Act, 1865.

Let [*&c.: Proceed as in* No. 865 *ante, to* noon] on the hearing of an application on the part of C. D., of [*residence and addition*]:

(*y*) See Dan. Pr. 1868. As to what applications under the Lands Clauses Act may be made by summons, see *Ibid.*

(*z*) 28 & 29 Vict. c. 49, s. 22; Dan. Pr. 1868, note (*y*). For order in like case, see *Ex parte Mayor, &c., of London,* M. R. 17 June, 1867, Reg. Lib. B. 1477. A similar jurisdiction at Chambers is given by the Public Offices Site Act, 1866 (29 & 30 Vict. c. 21), ss. 8, 21; The National Gallery Enlargement Act, 1866 (29 & 30 Vict. c. 83), ss. 13, 24; and 1867 (30 & 31 Vict. c. 41), ss. 5, 17; and the Houses of Parliament Act, 1867 (30 & 31 Vict. c. 40), ss. 8, 20. The application is made by an originating summons; for the practice as to which, see Dan. Pr. 1050, *et seq.*; and see *ante* Nos. 865—880, and notes thereto.

1. That the sum of £ A. cash: being the purchase-money for the fee-simple [*or as may be*] of certain land and premises situate at ——, and which has, pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, been paid into Court, to the credit of "*Ex parte* the Commissioners of Her Majesty's Works and Public Buildings: In the matter of the Courts of Justice Concentration (Site) Act, 1865," and now forms part of the £—— cash in Court to the same credit [*or as may be*]: may be invested in Consolidated £3 per cent. annuities [*or as may be*], and when so invested may be carried over to the credit of "*Ex parte* the Commissioners of Her Majesty's Works and Public Buildings: In the matter of the Courts of Justice Concentration (Site) Act, 1865: The account of [*State the title of the proposed special account*]."

2. That the dividends as they accrue, during the life of the applicant C. D., on the said annuities may be paid to the applicant C. D. until further order.

3. That, pursuant to the 80th section of the Land Clauses Consolidation Act, 1845 (*b*), the said Commissioners may be ordered to pay to the applicant his costs, as thereby provided for: including therein all reasonable charges and expenses of and incident to the purchase of the said land by the said Commissioners, and the conveyance thereof to them, and of this application: such costs, charges, and expenses to be taxed by the Taxing Master, in case the parties differ.

Dated [*&c.: Conclude as in* No. 865 *ante; including the foot note*].

2209. Affidavit as to the title of an applicant by petition or summons (*c*).

Formal parts: see ante No. 693.

1. [*Verify the title of the applicant.*]

2. I am not aware of any right in any other person than myself, or of any claim made by any other person than myself, to the said sums of £—— Consolidated £3 per cent. annuities, and £—— cash [*or other sum proposed to be dealt with*], or to any part thereof respectively [*Or, if the deponent is aware of any such right or claim, state or refer to, and except the same*].

(*b*) As to this section, see *ante* No. 2205, note (*u*).

(*c*) See Dan. Pr. 1867, 1874. As to when an affidavit of no adverse claim will be required, see Cons. Ord. XXXIV. 3; Registrars' Regul. 15 Mar. 1860, rule 34; Dan. Pr. 872, 1657, 1867.

2210. Summons for the appointment of a special guardian of an infant to convey or release land, or to appoint trustees to receive purchase money or compensation (*d*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of A. B., an infant, by C. D., his next friend.
And in the matter of the [*Title of the Special Act*].
And in the matter of the Lands Clauses Consolidation Act, 1845.

Let [*&c.: Continue as in* No. 865 *ante, to* noon], on the hearing of an application on the part of the above-named infant A. B., by the above-named C. D., of [*residence and addition*], his next friend: that the said C. D., or some other proper person, may be appointed the special guardian of the said A. B., for [*State what; as thus:*]

the purpose of selling and conveying or releasing to the —— Company, pursuant to the seventh section of the Lands Clauses Consolidation Act, 1845, certain lands situate at ——, which the said A. B. is seised or possessed of, or entitled to [*Or,* has an estate or interest in]; and which lands are required by the said company for the purposes of their above-mentioned Act.

Or, the purpose of nominating, under the seventy-first section of the Lands Clauses Consolidation Act, 1845, two trustees to receive the purchase-money or compensation payable by the —— Company, for certain lands situate at [*&c.: as above*].

Dated [*&c.: Conclude as in* No. 865 *ante*].

2211. Petition of course for taxation of a bill of costs, under sec. 83 (*e*).

In the High Court of Justice,
Chancery Division.
In the matter of [*Set out title of the Special Act; as thus:*] the Tooting, Merton, and Wimbledon Extension Railway Act, 1864.
And in the matter of the Lands Clauses Consolidation Act, 1845.
To the Right Honourable the Master of the Rolls.
The humble petition of the London and South Western Railway Company [*or as may be*].
Showeth as follows:

1. Your petitioners, under the powers vested in them by the

(*d*) See 8 & 9 Vict. c. 18, ss. 7, 71; Dan. Pr. 1869, 1870. The application is made by an originating summons; for the practice as to which, see Dan. Pr. 1850, *et seq.;* and see *ante* Nos. 865—880, and notes thereto.

(*e*) As to the costs of conveyances, and taxation thereof, see 8 & 9 Vict. c. 18, ss. 82, 83; Dan. Pr. 1882—1884; Morg. 56—58; Forms 2211, 2212, can readily be adapted to a case where the party entitled to the costs petitions for the taxation.

said Acts of Parliament, have purchased certain lands in the county of S., of S. M., of [*residence and addition*], for the purposes of their said railway [*or as may be*].

2. Under the provisions of the last mentioned Act your petitioners are liable to pay to the said S. M. his costs of, and incident to, the conveyance of such lands to your petitioners.

3. The said S. M. has delivered to your petitioners his bill of costs.

4. Your petitioners and the said S. M. cannot agree as to the amount of the said bill of costs; and your petitioners are therefore desirous of having the same taxed, under the provisions of the said last mentioned Act.

Your petitioners therefore humbly pray, that it may be referred to the proper Taxing Master of this Court to tax and settle the said bill: with all usual directions.

And your petitioners will ever pray, &c.

2212. Order on petition of course for the taxation of a bill of costs, under sec. 83 (*f*).

[*Date—title—and allegations in the petition.*]

It was therefore prayed, and it is accordingly ordered, that it be referred to the proper Taxing Master of this Court to tax and settle the said bill; and that the petitioners, and also all other parties, do produce before the said Master, upon oath, as he shall direct, all books, papers, and writings in their custody or power respectively, relating to the matters hereby referred, or any of them; and that they be examined upon interrogatories touching the same matters, or any of them, as the said Master shall direct.

And it is ordered, that if one sixth part of such bill shall be disallowed on such taxation, the said Master do tax the petitioners their costs of such taxation; and if one-sixth part of such bill shall not be disallowed on such taxation, the said Master do tax the said S. M. his costs of such taxation.

And it is ordered, that the said Master do certify the amount due in respect of the said bill: having regard to the costs of such taxation, so to be taxed as aforesaid.

(*f*) For orders in like case, see *Re Tooting, &c., Railway*, M. R. 15 Jan. 1867; *Re Liverpool Sanitary Amendment Act*, 1864, M. R. 26 Jan. 1867; *Re Monmouthshire Railway and Canal Act*, 1865, M. R. 14 Dec. 1869; all in Rolls' Lib.

SECTION VII.—THE RAILWAY COMPANIES ACT, 1867 (*g*).

2213. Petition for the appointment of a receiver and manager (*h*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the Beddgelert Railway Company; and in the matter of the Railway Companies Act, 1867 (*k*).

To Her Majesty's High Court of Justice.

The humble petition of R. M. O., of [*residence and addition*], and W. H. L., of, *&c.*

Showeth as follows:

1. The Beddgelert Railway Company is a railway company duly incorporated by an Act of Parliament made and passed in the session of Parliament holden in the 28th and 29th years of the reign of Her present Majesty, cap. cccxxii., intituled An Act for [*Setting out title of the Act*].

2. By the 14th section of the said Act it was provided that the capital of the company should be £100,000 in 1,000 shares of £100 each.

3. By the 24th section of the said Act it was provided that the works by that Act authorised comprised the following railways, and all proper stations, *&c.*: [*Here followed a description of the railways*].

4. By another Act of Parliament made and passed in the session, *&c.*, intituled An Act, *&c.*, the said company were authorised to raise, by the creation and issue of new shares, or stock, in addition to the capital which they were then already authorised to raise, such amount of capital as they should think fit, not exceeding £40,000.

5. By the last-mentioned Act the said company were empowered to construct a railway [*Describing same*].

6. The said company proceeded to construct the said railways and works authorised by the said Acts; and the same have been partially completed; and a portion of the said railways has been entirely completed, and has been opened, and is now open, for traffic.

7. The petitioners, on the 12th day of November, 1868, obtained a judgment against the said railway company for the sum of £1,502 13*s.* 5*d.* for debt, and £3 8*s.* for costs, in the Exche-

(*g*) 30 & 31 Vict. c. 127; 38 & 39 Vict. c. 31; Gen. Ord. in Chan. 24 Jan. 1868 (L. R. 3 Ch. xlii.); Dan. Pr. 1887—1901; Morg. 272—289.

(*h*) *Re Beddgelert Railway Company;* Presented 25 May, 1870; and filed 8 June, 1870. As to petitions for the appointment of a receiver and manager, see the 30 & 31 Vict. c. 127, s. 4; Dan. Pr. 1887.

(*k*) See Ord. 24 Jan. 1868, rule 29; Dan. Pr. 1887.

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quer Division of this Court, in respect of a debt which became due to them from the company since the passing of the Railway Companies Act, 1867; and such judgment is still in force and unsatisfied.

8. The petitioners are desirous that a receiver and manager of the undertaking of the company should be appointed by this honourable Court.

Your petitioners therefore humbly pray:

1. That a receiver and manager of the undertaking of the Beddgelert Railway Company may be appointed by this honourable Court; and that out of the moneys which may come to the hands of such receiver, when appointed, and properly applicable for that purpose, the amount due to the petitioners by virtue of the said judgment may be paid to them.

2. That for the purposes aforesaid all proper directions may be given, accounts taken, and inquiries made.

3. That the said railway company may pay to the petitioners the costs of this application and consequent thereon.

Or that [*&c.: Concluding as in* No. 1578 *ante*].

NOTE.—It is intended to serve this petition on the Beddgelert Railway Company (*l*).

2214. Order on the above petition (*m*).

[*Date—title—and introduction.*]

This Court doth order, that a proper person be appointed manager of the undertaking called the Beddgelert Railway Company, and of the works and property comprised therein; and receiver of the tolls, rents, calls, and arrears of calls, and all other moneys due or to become due to or receivable by the company from or in respect of the said railway and undertaking, and of the works and property comprised therein. And out of such moneys the said manager and receiver is to pay all expenses of working the said railway.

And it is ordered that the said receiver and manager do from time to time pass his accounts and pay the balances which shall be certified to be due from him into Court to the credit of "In the matter of the Beddgelert Railway Company."

[And

(*l*) See Ord. 24 Jan. 1868, rule 30; Dan. Pr. 1888.

(*m*) *Re Beddgelert Railway Company*, V.-C. S. 3 June, 1870, Reg. Lib. A. 1314; *Re Stafford and Uttoxeter Railway*, W. N. (1868), 113. As to the form of the order on a petition in like case, see Ord. 24 Jan. 1868, rule 31; Dan. Pr. 1888.

And it is ordered that the following inquiries be made, that is to say:

1. An inquiry what is due to the petitioners for principal, interest, and costs upon their judgment debt in the petition mentioned.

2. An inquiry whether there are any other and what debts of the said company; and whether the same, or any and which of them, are incumbrances on the said undertaking, or the tolls and money arising therefrom, or any and what parts thereof respectively; and how the said incumbrances were respectively created, and what are the rights and priorities of the persons for the time being interested therein.

Further consideration of the petition adjourned.

2215. Summons for determination of question respecting an execution (*n*).

Formal parts: see ante No. 881.

[*Set out the title of the cause or matter in which the execution in question was issued; and add:*]

And in the matter of the Railway Companies Act, 1867 (*o*).

Let [*&c.: Proceed as in* No. 881 *ante, to* noon] on the hearing of an application on the part of the above-named plaintiff A. B.:

Or, of the above-named defendants the —— Company: *or as may be:*

that [*State the question which has arisen, and is to be submitted for the determination of the Judge, as to whether property of the company taken in execution is liable to be so taken notwithstanding the Act*].

Dated [*&c.: Conclude as in* No. 881 *ante*].

(*n*) See 30 & 31 Vict. c. 127, s. 5; Ord. 24 Jan. 1868, rule 32; Dan. Pr. 1888.

(*o*) As to the title of the summons, see Ord. 24 Jan. 1868, rule 32, Dan. Pr. 1888.

2216.

Formal parts of a Scheme of Arrangement (*p*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the —— Railway Company;
And in the matter of the Railway Companies Act, 1867 (*r*).
Scheme of Arrangement between the above-named —— Company and their creditors.

(1). Statements.

1. 2. 3. [*Set out, in numbered paragraphs, the statements of the scheme, leading up to the proposal.*]

(2). Proposal.

The said company propose, as a scheme of arrangement between the said company and their creditors, the following terms; that is to say:
1. That, *&c.*
2. That, *&c.*
Sealed with the common seal of the —— Company, this —— day of ——, 187—.

Seal.

2217.

Declaration as to inability of company to meet engagements (*s*).

In the High Court of Justice,
Chancery Division.
In the matter of the —— Railway Company;
And in the matter of the Railway Companies Act, 1867.
By virtue of, and in accordance with, the above-mentioned

(*p*) See 30 & 31 Vict. c. 127, s. 6; Dan. Pr. 1888, 1889. For form of a scheme *in extenso*, see *Re Bristol and North Somerset Railway Company*, 6 Eq. 448—451, V.-C. G. The scheme must be printed on paper of the same size and description, and in the same style and manner, as proceedings are required to be printed; and every fifth line of each page of a printed scheme must be numbered; but a written scheme may be filed in the first instance; in which case it must be written bookwise upon paper of the same size and description; Ord. 24 Jan. 1868, rules 3, 9; and see *Ibid.*, rules 7, 8; Dan. Pr. 1889, 1890. As to the printing of proceedings, see R. S. C. Ord. LVI. 2; and *ante*, note (*a*) to No. 210. The scheme, together with the declaration of inability, and affidavit of its truth (see *post* Nos. 2217, 2218) annexed thereto, must be filed in the office of the Clerks of Records and Writs; Ord. 24 Jan. 1868, rule 5; Dan. Pr. 1890. As to filing a new scheme, see Dan. Pr. 1898.

(*r*) As to the title, see Ord. 24 Jan. 1868, rule 1; Dan. Pr. 1889.

(*s*) See 30 & 31 Vict. c. 127, s. 6; Dan. Pr. 1889. Form No. 2217 was used in the cases of *Re Mold and Denbigh Junction Railway Company* (1868,

Act, we, the —— railway company, do hereby declare that we are unable to meet our engagements with our creditors.

Sealed with our common seal this —— day of ——, 187—.

Sealed by order of the Board of Directors of the said company.
A. B.,
Secretary [*or as may be*].

2218. Affidavit of the truth of the declaration (*t*).

[*Title: as in* No. 2217 *ante.*]

I, A. B., of [*residence and addition*]: being the acting chairman for the time being of the board of directors of the above-named railway company: and we, C. D., of, *&c.*, E. F., of, *&c.*, and G. H., of, *&c.*, being the [major part in number of the] directors of the said company: severally make oath and say, as follows:

1. We have read a declaration made in this matter by the above-named company, and dated the —— day of ——, 187—, which states that the said company are unable to meet their engagements with their creditors.

2. From our knowledge of the state of affairs of the said company we say that the said declaration is, to the best of our respective judgment and belief, true; and that the said company are unable to meet their engagements with their creditors.

Sworn [*&c.: see ante* No. 696 *or* 698.]

2219. Indorsement on the scheme (*u*).

[*Title: as in* No. 2217 *ante.*]

[*Name and address of the solicitor, and London agent (if any), of the company; and also the address for service of such solicitor, in cases where an address for service is required by the General Orders of the Court: see ante* No. 94.]

M. No. 66); *Re Mid Wales Railway Company* (1868, M. No. 17); and *Re Mid Hants Railway Company* (1868, M. No. 141); but the attestation was used in the latter case only. The declaration, and also the affidavit of its truth (see *post* No. 2218), must be written bookwise, upon paper of the same size and description as that on which proceedings are printed; and be annexed to the scheme, and filed at the same time therewith; Ord. 24 Jan. 1868, rules 4, 5; Dan. Pr. 1889, 1890. As to such paper, see R. S. C. Ord. LVI. 2; and *ante*, note (*a*) to No. 210.

(*t*) See 30 & 31 Vict. c. 127, s. 6; Dan. Pr. 1889. The affidavit must be made by the chairman, and by the other directors, or the major part in number of them. Form No. 2218 was used in the cases of *Re Mid Wales Railway Company*, and *Re Mold and Denbigh Junction Railway Company*, *ante* No. 2217, note (*s*). As to the paper on which the affidavit must be written, and as to filing it with the scheme, see *ante* No. 2217 note (*s*).

(*u*) See Ord. 24 Jan. 1868, rule 6; Dan. Pr. 1890.

2220.
Certificate of Record and Writ Clerk that copy of written scheme is proper to be printed (*x*).

I hereby certify the above to be correct and proper to be printed.

X. Y.,
C. R. & W.

2221.
Certificate verifying printed copy (*y*).

I hereby certify that this print is a true copy of the scheme of arrangement certified by the Record and Writ Clerk as correct and proper to be printed.

A. B.,
Solicitor of the above [*Or*, within] named
—— company.

2222.
Certificate of filing of scheme (*z*).

Formal parts: see ante No. 1552.

These are to certify that [a printed copy of] the scheme of arrangement in this matter was regularly filed on the —— day of ——, 187— : as appears by my book.

2223.
Advertisement of scheme (*a*).

In the matter of the —— Railway Company ; and
In the matter of the Railway Companies Act, 1867.

Notice is hereby given, that on the —— day of ——, 187—, a scheme of arrangement between the above-named company and their creditors [*State here whether the scheme contains or not any provisions for settling the rights of any and what classes of shareholders as among themselves, or for raising additional share or loan capital : and which, and to what extent*] was filed in the Chancery Division of the High Court of Justice ; and a copy of the said scheme will be furnished to any person requiring the same by the

(*x*) See Ord. 24 Jan. 1868, rule 7 ; Dan. Pr. 1890. Where a written, instead of a printed, scheme is filed (see *ante* No. 2216, note (*p*)), a fair copy of it must, at the time of filing, be left with the Clerks of Records and Writs, for examination and certificate ; see *Ibid.*

(*y*) See Ord. 24 Jan. 1868, rule 8 ; Dan. Pr. 1890.

(*z*) See Ord. 24 Jan. 1868, rule 13 ; Dan. Pr. 1891.

(*a*) See Ord. 24 Jan. 1868, rule 10, and Sched. 3, No. 1. For advertisement in like case, see *Re Mid Hants Railway Company ;* London Gazette, 24 July, 1868, p. 4133. As to advertising the scheme, see 30 & 31 Vict. c. 127, s. 8 ; Ord. 24 Jan. 1868, rule 12 ; Dan. Pr. 1891.

undersigned, or at the office of the company, at ——, on payment of the regulated charges for the same.

A. and B., of [*Address*],
[Agents for C. and D., of [*Address*]],
Solicitors for the Company (*b*).

2224.
Demand of copies of scheme (*c*).

In the High Court of Justice,
Chancery Division.

[*Title of matter.*]

I request to be furnished with (ten) copies of the scheme of arrangement in this matter. Dated [*&c.: Conclude as in* No. 92 *ante.*]

2225.
Certificate verifying the copies (*d*).

I hereby certify that this print is a true copy of the scheme of arrangement filed in this matter.

A. B.
Solicitor of the above-named ——
company.

2226.
Notice of motion or summons to stay proceedings in an action against company after scheme filed (*e*).

Formal parts: see ante No. 1571 *or* No. 881.
on the part of the defendants, the above-named —— Railway Company, that: a scheme of arrangement between the said company and their creditors, having been on the —— day of ——, 187—, filed in the Chancery Division of this honourable Court: all further proceedings in this action may be stayed as against the said company, on such terms as the Court may think fit.

(*b*) The notice must be signed by the solicitor of the company, or his London agent; and must set forth the name and address of such solicitor, and London agent (if any); Ord. 24 Jan. 1868, rule 12; Dan. Pr. 1891.

(*c*) See Ord. 24 Jan. 1868, rule 10; Dan. Pr. 1890. The requisition in writing for the copies is to be delivered at the principal office of the company, or at the office of their solicitor, or of his London agent (if any); *Ibid.* The sum of one halfpenny per folio is to be paid for every copy of the scheme; Ord. 24 Jan. 1868, rule 11; Dan. Pr. 1891, note (*n*).

(*d*) See Ord. 24 Jan. 1868, rule 10; Dan. Pr. 1890.

(*e*) See 30 & 31 Vict. c. 127, s. 7; Sup. Cot. Jud. Act, 1873 (36 & 37 Vict. c. 66), s. 24 (5). The application should be made in the division in which the action is pending. As to the terms to be imposed, see Ord. 24 Jan. 1868, rule 14; Dan. Pr. 1491.

2227.
Notice of motion or summons for leave to issue execution, &c., against company, notwithstanding scheme (*f*).

Formal parts: see ante No. 1571 *or* 881.
on the part of C. D., of [*residence and addition*], that, notwithstanding the scheme of arrangement of the above-named company, filed in this matter on the —— day of ——, 187—, the applicant may be at liberty to issue execution against the property of the said company, on the judgment recovered by him in an action against the said company in the —— Division of Her Majesty's High Court of Justice.

2228.
Petition to confirm scheme (*g*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title: as in* No. 2217 *ante.*]
To Her Majesty's High Court of Justice.
The humble petition of A. B., C. D., *&c.*, directors of the above-named company.
Showeth:
That on the —— day of ——, 187—, the directors of the above-named company filed in this honourable Court a scheme of arrangement between the above-named company and their creditors.
Your petitioners therefore humbly pray, that the scheme so filed as aforesaid may be confirmed by the order of this honourable Court.
And your petitioners will ever pray, *&c.*

2229.
Summons for a day to be appointed for hearing the petition (*h*).

Formal parts: see ante No. 881.
on the part of A. B., C. D., *&c.*, directors of the above-named company, that a day may be appointed on which their petition presented in this matter on the —— day of ——, 187—, is to come into the paper for hearing.

2230.
Advertisement of the petition (*i*).

[*Full title: as in* No. 2217 *ante.*]
Notice is hereby given that a petition was, on the —— day of ——, 187—, presented to Her Majesty's High Court of Justice by the directors of the above-named company, praying the confirmation of a scheme of arrangement between the said company

(*f*) See 30 & 31 Vict. c. 127, s. 9; Dan. Pr. 1891, 1896, 1899.
(*g*) See 30 & 31 Vict. c. 127, s. 16; Ord. 24 Jan. 1868, rules 15, 16, and Sched. 3, No. 2; Dan. Pr. 1893. As to assents to the scheme, see 30 & 31 Vict. c. 127, ss. 10—15; Dan. Pr. 1892, 1893.
(*h*) See Ord. 24 Jan. 1868, rules 17, 18; Dan. Pr. 1893, 1894.
(*i*) See Ord. 24 Jan. 1868, rules 17, 18, and Sched. 3, No. 3; Dan. Pr. 1893, 1894. As to the papers in which the notice is to be advertised, see *Ibid.*

and their creditors, filed in the Chancery Division of Her Majesty's High Court of Justice on the —— day of ——, 187—; and that the said petition is directed to be heard before the Vice-Chancellor Sir —— [*Or*, before the Master of the Rolls] on the —— day of ——, 187—. And any person whose interests are affected by such scheme, and who may be desirous to oppose the making of an order for the confirmation thereof under the above Act, should enter an appearance at the office of the Clerks of Records and Writs on or before the —— day of ——, 187—, and appear by himself or counsel at the hearing of the said petition. And a copy of the scheme and petition will be furnished to any person requiring the same by the undersigned, or at the office of the company at ——, on payment of the regulated charge for the same.

A. and. B., of [*Address*],
[Agents for C. and D., of [*Address*]],
Solicitors for the Petitioners.

2231.
Præcipe for appearance by opponent of scheme (*k*).

In the High Court of Justice,
Chancery Division.
[*Title, and reference to the record.*]
Enter an appearance for G. H., of [*residence and addition*], to the scheme of arrangement filed in this matter.
Dated this —— day of ——, 187—.
[*Name, &c., of solicitor or party entering the appearance; as in* No. 92 *ante.*]

2232.
Notice of appearance.

Formal parts: see ante No. 21.
Take notice that I have this day entered an appearance for G. H., of [*residence and addition*], to the scheme of arrangement filed in this matter.

2233.
Order confirming a scheme (*m*).

[*Date—title—and introduction.*]
And this Court being of opinion that the said scheme is beneficial for all parties interested in the said M. & D. J. Railway Company, doth order that the said scheme be confirmed.

(*k*) See Ord. 24 Jan. 1868, rules 19, 20; Dan. Pr. 1894.

(*m*) See 30 & 31 Vict. c. 127, s. 11; Dan. Pr. 1894. For order in like case, see *Re Mold and Denbigh Junction Railway Company*, V.-C. M., 12 June, 1868, Reg. Lib. B. 1664. For order confirming a scheme (but not to be treated as

2234. Notice of order confirming a scheme (*n*).

[*Title: as in* No. 2217 *ante.*]

Notice is hereby given that the petition which was on the —— day of ——, 187—, presented to Her Majesty's High Court of Justice by the directors of the above-named company, praying that the scheme of arrangement between the said company and their creditors, filed in the Chancery Division of the said Court on the —— day of ——, 187 —, might be confirmed, came on to be heard before the Vice-Chancellor Sir —— [*Or*, before the Master of the Rolls] on —— the —— day of ——, 187—; and by an order then made by the said Judge it was ordered that the said scheme be confirmed (*o*).

Dated this —— day of ——, 187—.

A. and B., of [*Address*].
[Agents for C. and D., of [*Address*]],
Solicitors for the said company.

2235. Notice of motion for leave to appeal for order confirming scheme (*p*).

[*Same as* No. 1434 *ante.*]

2236. Docket of enrolment of order confirming a scheme (*r*).

Whereas heretofore, that is to say, on the —— day of ——, in the year of our Lord, 187 —, A. B., of, *&c.*, C. D., of, *&c.*, and

binding on certain unpaid vendors and creditors, unless they expressly assented), continuing appointment of receiver and manager, and providing for the costs of the proceedings, see *Re Hayling Railway Company*, V.-C. M., 7 May, 1868, Reg. Lib. A. 1607. And for order confirming a scheme as varied thereby, and providing for the costs, see *Re Isle of Wight Railway Company*, V.-C. J., 20 Nov. 1869, Reg. Lib. A. 3024; W. N. (1869), 239.

(*n*) See Ord. 24 Jan. 1868, rule 17; Dan. Pr. 1894. As to the time allowed, and the papers in which, to advertise the notice, see *Ibid.*

(*o*) State, correctly, the purport of the order made.

(*p*) See Ord. 24 Jan. 1868, rule 26; Dan. 1895, 1899. As to when leave to appeal is necessary, see *Ibid.* The notice of motion must be served on the solicitor to the company, or on the company at their principal office; *Ibid.* Leave was refused in *Re Devon Railway Company*, W. N. (1868), 238.

(*r*) See Ord. 24 Jan. 1868, rules 21—24; Dan. Pr. 1894, 1895. An order confirming a scheme is enrolled at the Record and Writ Clerks' Office; but the scheme itself is enrolled in the Inrolment Office in Chancery Lane, pursuant to the 30 & 31 Vict. c. 127, s. 18, after the order confirming it has been enrolled: Ord. 24 Jan. 1868, rule 21; Dan. Pr. 1894; and such enrolment is effected in the same manner as the enrolment of a deed directed by statute to be enrolled in the Court of Chancery; Ord. 24 Jan. 1868, rule 28; Dan. Pr.

E. F., of, *&c.* (*s*), (three) of the directors of the company hereinafter mentioned, duly filed a scheme in the Chancery Division of Her Majesty's High Court of Justice in a certain matter intituled [*Set out the full title, as in the order*], purporting to be a scheme of arrangement between the said —— company and their creditors; together with a declaration and affidavit, pursuant to the Act of Parliament in that case made and provided; as in and by the said scheme duly filed, and remaining as of record in the Chancery Division of the said Court, will more fully appear:

[*If so, add:*] And whereas G. H., I. K., and L. M., duly entered appearances to the said scheme:

And whereas [*Recite, in the past tense, the whole of the order confirming the scheme: substituting* the said Court—the said matter—*for the expressions* this Court—this matter—*respectively*]: It is, therefore, this present day, that is to say ——day, the —— day of ——, 187— [*Insert date of order*], by Her Majesty's High Court of Justice, and the power and authority thereof, ordered and adjudged that the said scheme be confirmed [*Recite in words at length the whole of the mandatory part of the order*].

2237. Certificate that the docket is correct (*u*).

I have inspected this docket, and hereby certify that the statement of the scheme and order therein contained is correct.

[*Signature of Record and Writ Clerk.*]

At the request of the said ——.

1896. For the general practice as to enrolments of orders, see Dan. Pr. pp. 882—884. Orders confirming schemes of arrangement have been enrolled in the following cases: *Re Hayling Railway Company* (1868, H. No. 37), V.-C. M., 7 May, 1868, Reg. Lib. A. 1607: enrolled 10 July, 1868; *Re Mid Wales Railway Company* (1868, M. No. 17), V.-C. M., 12 June, 1868, Reg. Lib. B. 2044: enrolled 18 Sept. 1868; *Re Mold and Denbigh Junction Railway Company* (1868, M. No. 66), V.-C. M., 12 June, 1868, Reg. Lib. B. 1664: enrolled 18 Sept. 1868; and *Re Isle of Wight Railway Company* (1869, I. No. 57), V.-C. J., 20 Nov. 1869, Reg. Lib. A. 3024: enrolled 31 Dec. 1869, as amended by the order; see *ante* No. 2233, note (*m*).

(*s*) Take the names and addresses from the affidavit made by the chairman and directors; see *ante* No. 2218.

(*u*) As to this certificate, see Ord. 24 Jan. 1868, rule 22; Dan. Pr. 1895; and see Cons. Ord. XXIII. 24; Dan. Pr. 883. This certificate is not to be given, unless the newspapers containing the notices (see *ante* No. 2234) of the order confirming the scheme be produced to the Record and Writ Clerk when the docket of the enrolment is presented to him for inspection; see Ord. 24 Jan. 1868, rule 22; Dan. Pr. 1895.

2238.
Notice of the confirmation and enrolment of the scheme (*x*).

[*Proceed as in* No. 2234 *ante, to the end of the statement of the order confirming the scheme; and continue thus:*]

And notice is hereby also given, that the said order confirming the said scheme was enrolled in the said High Court of Justice on the —— day of ——, 187—; and that the said scheme was enrolled in the said High Court of Justice on the —— day of ——, 187—.

Dated [*&c.: Conclude as in* No. 2234 *ante*].

SECTION VIII.—ACT FOR PRODUCTION OF CESTUI QUE VIE (*z*).

2239.
Motion paper for production of *cestuis que vie* out of Court (*a*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

[*Title; as thus:*]

Ex parte E. F.

In the matter of an indenture of lease dated ——, 187—, made between A. B. of the one part, and C. D. of the other part [*or as may be*].

And in the matter of the Act 6th Anne, chapter 18, intituled "An Act for the more effectual discovery of the death of persons pretended to be alive, to the prejudice of those who claim estates after their deaths."

To move on behalf of E. F., of [*residence and addition*], that C. D., of, *&c.*, may be ordered, on the ——, 187—, to produce and show at the door of the parish church of E., in the county of F.: between the hours of eleven in the forenoon, and one in the afternoon [*or as may be*]: according to the provisions of the above Act: to the said E. F.,

Or, to G. H., of, *&c.*, the agent of the said E. F.,

L. M., N. O., and P. Q., in the above-mentioned indenture dated, *&c.*, respectively described, or some or one of them (*b*).

(*x*) See 30 & 31 Vict. c. 127, s. 19; Dan. Pr. 1894. The notice is to be published in the London Gazette; *Ibid.* For a notice in like case, see *Re Devon and Somerset Railway Company;* London Gazette, 11 Aug. 1868, p. 4462. As to obtaining printed copies of the scheme when enrolled and confirmed, see 30 & 31 Vict. c. 127, s. 20; Dan. Pr. 1894, note (*n*).

(*z*) 6 Anne, c. 18. As to this Act, see Dan. Pr. 1908—1911. As to the course where the tenant for life, or *cestui que vie*, is abroad: or, though alive, cannot be produced: see 6 Anne, c. 18, ss. 2, 4; Dan. Pr. 1910, 1911.

(*a*) See 6 Anne, c. 18, s. 1; Dan. Pr. 1908, 1909. For order in like case, see *Ex parte Earl of Abergavenny*, V.-C. K., 5 May, 1865, Reg. Lib. A. 807 (on special motion); and see Seton, ed. 3, 521, No. 1.

(*b*) For other formal parts of the motion paper, see *ante* No. 1570.

2240.
Affidavit in support (*c*).

Formal parts : see ante No. 693.

1. [*Show the creation of the life estate ; as thus :*] By an indenture dated the ——, 18—, and made between A. B. of the one part, and C. D. of the other part : being the indenture mentioned in the title or heading of this affidavit : certain lands therein described, situate at W., in the parish of E., in the county of F., were demised by the said A. B. to the said C. D., for and during the lives of L. M., N. O., and P. Q., therein respectively described, and the life of the longest liver of them.

2. [*Show the applicant's title to the reversion ; as thus :*] By indenture dated the ——, 187—, made between the said A. B. of the one part, and me, this deponent, of the other part, the said A. B. granted and conveyed to me, my heirs and assigns, all the lands comprised in, and demised by, the said indenture of lease, but subject to such lease. I am now entitled to the reversion of the said lands, expectant on the death of the survivor of the said L. M., N. O., and P. Q.

3. [*State special ground for the application ; as thus :*] I have good cause to believe that all of them the said L. M., N. O., and P. Q., are dead ; and that such deaths are concealed by the said C. D., the lessee, and present tenant of the said lands.

2241.
Motion paper for production of *cestuis que vie* in Court, on default (*d*).

Formal parts : see ante No. 1570.

To move on behalf of E. F., in the annexed order dated, *&c.*, named, that C. D., therein named, may be ordered to produce L. M., N. O., and P. Q., therein also named, at the bar of this Court on ——, 187—.

An affidavit in support accompanies.

2242.
Affidavit in support (*d*).

Formal parts : see ante No. 693.

1. [*Prove service of the order to produce at the church door : see ante* No. 1266.]

2. [*Prove attendance there, and non-production ; as thus :*] On the —— day of ——, 187—, I personally attended and waited at the door of the parish church of E., in the county of F., from before the hour of eleven of the clock in the forenoon, till after the hour of one of the clock in the afternoon of that day : being the place and time appointed by the said order of the ——, 187—, for the production by the said C. D. to me of L. M., N. O., and P. Q., in the said order named, or some or one of them ; but

(*c*) See Dan. Pr. 1909.

(*d*) See 6 Anne, c. 18, s. 1 ; Dan. Pr. 1909. For order in like case, see Seton, ed. 3. 522, No. 2.

the said C. D. did not, nor did any person on his behalf, attend at the time and place aforesaid and produce the said L. M., N. O., and P. Q., or any or either of them; nor have the said L. M., N. O., and P. Q., or any or either of them, been produced to me since the date of the said order.

2243.

Motion paper for final order, on non-production (*e*).

Formal parts: see ante No. 1570.

To move on behalf of E. F., in the annexed order dated *&c.*, named, for an order that L. M., N. O., and P. Q., in the said order named, may be deemed to be dead: in the event of their not being produced in open Court, pursuant to such order, on the ——, 187—.

An affidavit of service of the order accompanies.

2244.

Affidavit in support.

Formal parts: see ante No. 693.

1. [*Prove service of the order for production in Court; see ante* No. 1266.]

Section IX.—The Legacy Duty Act (*a*).

2245.

Request for a direction for payment in under the Legacy Duty Act (*b*).

[*The certificate of the payment of the legacy duty issued under the Legacy Duty Act, contains a request for the payment into Court, and there must be written on the certificate, a statement, signed by the person desiring to make the payment in or his solicitor, specifying the circumstances under which the payment is made and the amount to be paid in.*]

(*e*) See 6 Anne, c. 18, s. 1; Dan. Pr. 1909, 1910. For order in like case see Seton, ed. 3, 522, No. 3.

(*a*) 36 Geo. III. c. 52, s. 32; partly repealed by 35 & 36 Vict. c. 44, s. 26, and Sched. 2, Part II.; Chancery Funds Cons. Rules, 1874, rule 65; and see Dan. Pr. 1911—1914.

(*b*) Where the legacy or share of residue paid in consists of cash, no order for payment in is requisite; Dan. Pr. 1912. As to the mode of paying money into Court, see note (*b*) to No. 1974 *ante*.

2246.
Request for investment of money paid in under Legacy Duty Act (*c*).

Chancery.

To the Paymaster-General.

I request that the sum of £—— now standing to the credit of [*State the title of the account*], may be invested in Consolidated £3 per cent. annuities, pursuant to rule 65 of the Chancery Funds Consolidated Rules, 1874; and that the dividends on such annuities, and all accumulations thereof, may be invested in like annuities.

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party, as in* No. 92 *ante.*]

2247.
Request to withdraw from deposit money paid into Court under the Legacy Duty Act (*d*).

Chancery.

To the Paymaster-General.

I request that the sum of £——, **money on deposit** to the credit of [*State title of account*], may be **withdrawn** from deposit for the purpose of investment in Consolidated £3 per cent. annuities, pursuant to rule 65 of the Chancery Funds Consolidated Rules, 1874.

Dated the —— day of ——, 187—.

[*Name and address of solicitor or party, as in* No. 92 *ante.*]

(*c*) A sum of money amounting to or exceeding £40, paid in under the Legacy Duty Act, will, upon a written request of the party paying it in or of his solicitor, or upon a written request made by or on behalf of a person claiming to be entitled thereto or interested therein, be invested (without an order) in Consolidated £3 per cent. Annuities; and the dividends accruing in respect thereof, when or so soon as they amount to or exceed £10, will be from time to time invested in like annuities, if so requested either in the original request or in a subsequent request; Chancery Funds Cons. Rules, 1874, rule 65. As to the mode of investing money in Court, see *ante* note (*d*) to No. 1998.

(*d*) Where money paid into Court under the Legacy Duty Act has been placed on deposit before any request for investment has been left at the Chancery Pay Office, such money, and any interest to be credited in respect thereof, will upon request be withdrawn from deposit and invested; Chancery Funds Cons. Rules, 1874, rule 65. As to placing money on deposit, see *ante* note (*a*) to No. 1994. As to withdrawing money from deposit, see *ante* note (*a*) to No. 1994, and note (*a*) to No. 2033.

2248.
Motion paper for leave to transfer stock into Court (*h*).

Formal parts: as in No. 1570 *ante; but entitle the motion paper, thus:*

In the matter of A. B., an infant [*Or*, A. B., absent beyond seas].

And in the matter of the Act 36th George the Third, chapter 52, intituled "An Act for repealing certain duties on legacies and shares of personal estates, and for granting other duties thereon in certain cases."

To move on behalf of C. D., of [*residence and addition*]: executor of the will [*Or*, administrator of the personal estate] of E. F., late of, *&c.*, deceased: that he may be at liberty to transfer £——, Consolidated £3 per cent. annuities [*or as may be*], into Court to the credit of "In the matter of A. B., an infant" [*Or*, "A. B., absent beyond seas"]: being a legacy [*Or*, share of residue of personal estate] to which the said A. B. is entitled under the said will.

Or, being the said A. B.'s distributive share of the said E. F.'s personal estate, as one of his next of kin; *or as may be.*

2249.
Summons, for the like (*i*).

[*Title: as in* No. 2248 *ante.*]

Let [*&c.: Proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of C. D., of [*&c.: Continue as in* No. 2248 *ante, to the end*]. Dated [*&c.: Conclude as in* No. 865 *ante*].

2250.
Petition for the like (*j*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

[*Title: as in* No. 2248 *ante.*]

To Her Majesty's High Court of Justice.

The humble petition of C. D., of [*residence and addition*].

Showeth as follows:

[*Show how the fund to be transferred into Court has arisen; as thus:*] 1. E. F., late of [*residence and addition*], by his will dated ——, 18—, bequeathed to his nephew, the above-named A. B., a legacy of £500 Consolidated £3 per cent. annuities; and appointed

(*h*) See Dan. Pr. 1912. For order in like case, see Seton, ed. 3, 721. For the mode of making transfers into Court, see *ante* note (*a*) to No. 1975.

(*i*) See Dan. Pr. 1912. For order in like case, see *Re Thomas*, M. R. at Chambers, 8 July, 1869, Reg. Lib. B. 2305. The application is made *ex parte* by an originating summons; for the practice as to which, see Dan. Pr. 1050, *et seq.*; and see *ante* Nos. 865—880, and notes thereto.

(*j*) See Dan. Pr. 1912. The application by petition is made *ex parte.*

your petitioner sole executor of his will. The said E. F. died on the ——, 187—, without having altered or revoked his said will; and on the ——, 187—, your petitioner duly proved such will in the Principal Registry of the Probate Division of this Court.

[*State the disability rendering the transfer into Court necessary; as thus:*] 2. The said A. B. is an infant of the age of —— years, or thereabouts.

[*State the amount to be transferred; as thus:*] 3. By reason of such disability of the said A. B., your petitioner is desirous to transfer into Court, under the provisions of the above-mentioned act, in manner hereinafter mentioned, the sum of £470 Consolidated £3 per cent. annuities, residue of the said legacy of £500 like annuities, after the sale and application of £30, part thereof, for the legacy duty thereon.

Your petitioner therefore humbly prays, that he may be at liberty to transfer the said sum of £470 Consolidated £3 per cent. annuities into Court, to the credit of "In the matter of A. B. an infant" [*Or*, "A. B., absent beyond seas"]

Or that [*&c.: Conclude as in* No. 1578 *ante; and add foot note* No. 1579].

2251. Request to cease placing on deposit, or investment, of dividends (*l*).

[*Same as* No. 1997 *or* No. 2004 *ante.*]

2252. Petition for transfer and payment of legacy to the legatee (*m*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge*].
[*Title: as in* No. 2248 *ante.*]
To Her Majesty's High Court of Justice.

The humble petition of the above-named A. B., of [*residence and addition*], late an infant [*or as may be*].

Showeth as follows:

[*Show how the fund arose; and the payment into Court; as thus:*] 1. E. F., late of, *&c.*, a maternal uncle of your petitioner, died intestate on ——, 187—, leaving your petitioner one of his next of kin according to the statutes of distribution; and on the ——, 187—, letters of administration of his personal estate were granted to C. D. by the Principal Registry of the Probate Division of this Court.

2. In consequence of the infancy of your petitioner, the said

(*l*) See note (*cc*) to No. 1997 *ante.*

(*m*) See Dan. Pr. 1912, 1913. For order in like case, see *Re Barnett*, V.-C. S. 15 Dec. 1865, Reg. Lib. A. 2357.

C. D. on or about the ——, 187—, paid into Court to the credit of "In the matter of A. B. an infant," the sum of £ A., as your petitioner's distributive share of the personal estate of the said E. F., as one of his next of kin.

[*Show the present state of the fund; as thus:*] 3. The said £ A. was invested in the sum of £ B. Consolidated £3 per cent. annuities; and the same, with the dividends and accumulations of dividends thereon, is now represented by the sums of £ C. like annuities, and £ D. cash, respectively remaining to the credit of the said matter.

[*Show that the disability has been removed; as thus:*] 4. Your petitioner attained his age of twenty-one years on the —— day of ——, 187—.

Your petitioner therefore humbly prays, that the sums of £ C. Consolidated £3 per cent. annuities, and £ D. cash, in Court to the credit of "In the matter of A. B. an infant," may be respectively transferred and paid to your petitioner, A. B.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

2253. Summons for the like (*o*).

[*Title: as in* No. 2248 *ante.*]

Let [*&c.: Proceed as in* No. 865 *or* No. 881 *ante, to* noon], on the hearing of an application on the part of the above-named A. B., of [*residence and addition*], late an infant but now adult, that the [*Continue as prayer of* No. 2252 *ante, substituting* "applicant" *for* "petitioner."] Dated [*&c.: Conclude as in* No. 865 *or* No. 881 *ante*].

2254. Affidavit in support of petition or summons for transfer and payment of legacy to the legatee (*q*).

Formal parts: see ante No. 693.

1. I know and am well acquainted with A. B., in the title or heading of this affidavit named. He is the same person as A. B., the petitioner named in the petition presented to Her Majesty's High Court of Justice

Or, as A. B., the applicant named in the summons taken out at the Chambers of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor ——]

in this matter, on the —— day of ——, 187— ; and he is also the

(*o*) See Dan. Pr. 1912, 1913. For order in like case, see *Re Gadesden*, V.-C. S. at Chambers, 4 Dec. 1866, Reg. Lib. A. 2772. As to when the application may be made by summons, see Cons. Ord. XXXV. 1 (2); Dan. Pr. 1913. If an order has previously been made in the matter, an ordinary summons will be sufficient: otherwise, an originating summons will be necessary.

(*q*) See Dan. Pr. 1913.

same person as A., son of G. B. and H. his wife, named in the paper writing now produced and shown to me, and marked A. (*r*), and purporting to be a certified copy of an entry in the register book of baptisms kept for the parish of M., for the year 18— [*or as may be; see ante* No. 1220, *paragraph* 3].

2. [*Verify any other facts stated in the petition; or necessary to be proved in support of the summons.*]

3. [*Show means of knowledge.*]

SECTION X.—LAND TAX REDEMPTION ACTS (*s*).

2255. Petition for leave to cut and sell timber on a settled estate, and apply proceeds in redeeming the land tax (*t*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the estates settled by the will of A. B., esquire, deceased [*or as may be*].

And in the matter of the Act 42nd George the Third, chapter 116, intituled "An Act for consolidating the provisions of the several Acts passed for the redemption and sale of the land tax into one Act, and for making further provision for the redemption and sale thereof; and for removing doubts respecting the right of persons claiming to vote at elections for Knights of the Shire and other members to serve in Parliament, in respect of messuages, lands, or tenements, the land tax upon which shall have been redeemed or purchased."

To Her Majesty's High Court of Justice.

The humble petition of C. D., of [*residence and addition*].

Showeth as follows:

1. [*State the instrument under which the petitioner claims title so far as is sufficient to show that he is entitled beneficially to the rents and profits of the hereditaments charged with the land tax, and that he is restricted from cutting down timber standing thereon.*]

2. [*State the amount of the land tax.*]

3. [*Show that there is timber growing on the estate in a fit state to be cut; and that it is expedient to cut down sufficient to redeem the land tax.*]

Your petitioner therefore humbly prays, as follows:

1. That he may be at liberty to cut down and sell such quantity of timber upon the said settled estates as shall be sufficient to redeem the land tax

(*r*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

(*s*) 42 Geo. III. c. 116, s. 67; amended by 16 & 17 Vict. c. 117. As to these Acts, see Dan. Pr. 1914, 1915. As to the application in redemption of land tax, of a fund paid in under the Lands Clauses Act, see Dan. Pr. 1863.

(*t*) See Dan. Pr. 1914.

charged upon the said estates, and to defray the costs and expenses hereinafter mentioned.

2. That out of the proceeds of such sale the costs and expenses incurred in the surveying, valuing, and felling such timber, or otherwise on account of the sale thereof, and the costs of this application may be paid and satisfied.

3. That thereout also the land tax charged on the said estates may be redeemed.

4. That the residue of such proceeds may be applied and disposed of in such manner as this Court may please to direct.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

Section XI.—The National Debt Act, 1870 (*x*).

2256. Petition for the re-transfer of stock, and payment of dividends (*y*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Ex parte E. A. S., W. A. S., F. H. W., and A. E. W. [*or as may be*].
In the matter of the National Debt Act, 1870.

To Her Majesty's High Court of Justice.

The humble petition of E. A. S., of, *&c.*, W. A. S., of, *&c.*, F. H. W., of, *&c.*, and A. E. W., of, *&c.*

Showeth as follows:

1—6. [*Statements showing that a sum of* £266 *Consolidated* £3 *per cent. annuities was in* 1803 *purchased in the names of the trustees of a marriage settlement, upon certain trusts.*]

7. The dividends upon the said annuities were duly received by the said trustees, and the survivor of them, down to and including the dividend due in respect thereof in the month of July, 1812: since which time no dividends have been received in respect thereof; and in the year 1822, in consequence of the dividends being unclaimed, the said annuities, and the dividends then due

(*x*) 33 & 34 Vict. c. 71, s. 55; Dan. Pr. 1915—1917. The former Unclaimed Stock Acts (56 Geo. III. c. 60, s. 5; 8 & 9 Vict. c. 62; 24 & 25 Vict. c. 3, s. 8) are repealed by the Statute Law Revision Act, 1870 (33 & 34 Vict. c. 69), s. 1, and Sched.

(*y*) *Re Sanford:* petition presented under, and intituled in, the 56 Geo. III. c. 60 (now repealed), and filed 22 Mar. 1867. For the order thereon, see V.-C. W. 23 Feb. 1867, Reg. Lib. B. 584; and see S. C., W. N. (1867), 77. For order in like case, see Seton, ed. 3, 1106, No. 2. For orders for inquiry as to title, and for transfer and payment to a second claimant, see Seton, ed. 3, 1106, No. 1; 1107, No. 3.

thereon were, in pursuance of the provisions of the said Act of Parliament (*z*), carried over, and have ever since been, and are now standing, to the account of the Commissioners for the Reduction of the National Debt, in the books of the Governor and Company of the Bank of England.

8—17. [*Statements showing that the petitioners F. H. W. and A. E. W. were the representatives of the last surviving trustee of the marriage settlement; and that the other petitioners were beneficially entitled to the fund.*]

Your petitioners therefore humbly pray, that: upon payment by your petitioners E. A. S. and W. A. S. to her Majesty's Attorney-General and the Commissioners for the Reduction of the National Debt, of their costs of this application and relating thereto: to be taxed in case the parties differ: the said sum of £266 Consolidated £3 per cent. annuities, now standing to the account of the Commissioners for the Reduction of the National Debt, in the books of the Governor and Company of the Bank of England, with all dividends accrued due thereon since the transfer of such stock to the said Commissioners, and the accumulations, if any, thereof, may be transferred and paid by the said Commissioners to your petitioners F. H. W. and A. E. W.: they undertaking to apply the same according to the trusts affecting the same.

Or that [*Concluding as in* No. 1578 *ante; and foot note,* No. 1579].

(*z*) 56 Geo. III. c. 60.

SECTION XII.—PROPERTY LAW AMENDMENT ACT (*a*).

2257. Petition for the appointment of a nominee to surrender an existing lease, and to accept a new lease, on behalf of an infant, or married woman (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of A. B., an infant, by C. D., his next friend;

Or, of A. B., the wife of E. B., by C. D. her next friend;

And in the matter of the Act 11th George the Fourth and 1st William the Fourth, chapter 65, intituled "An Act for consolidating and amending the law relating to property belonging to infants, femes covert, idiots, lunatics and persons of unsound mind" (*d*).

To Her Majesty's High Court of Justice.

The humble petition of the above-named A. B., by C. D., of [*residence and addition*], his [*Or*, her] next friend.

Showeth as follows:

1. [*State the title of the petitioner to the beneficial interest in the lease proposed to be surrendered.*]

2. [*State why such surrender is deemed expedient; and on what terms the new lease is to be granted.*]

Your petitioner therefore humbly prays, that the said C. D., or some other proper person, may be appointed, in the place of your petitioner, to surrender, by deed, the said indenture of lease of the ——, 18—; and to accept and take, in the place and for the benefit of your petitioner, a new lease of the premises comprised in the said indenture for and during the lives of N. O. and P. Q. [*or as may be*]: such surrender and new lease to be settled by the Judge (*e*).

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

(*a*) 11 Geo. IV. & 1 Will. IV. c. 65; Dan. Pr. 1917—1922.

(*b*) 11 Geo. IV. & 1 Will. IV. c. 65, s. 12; Dan. Pr. 1917. For order in like case, see Seton, ed. 3, 695, No. 1. As to the effect of a surrender made and of a lease executed under the Act, see 11 Geo. IV. & 1 Will. IV. c. 65, s. 31; Dan. Pr. 1922. As to the uses, &c., to which the new lease will be subject, see 11 Geo. IV. & 1 Will. IV. c. 65, s. 15; Dan. Pr. 1918, 1919. As to the payment of fines, &c., before renewal, see 11 Geo. IV. & 1 Will. IV. c. 65, s. 20; Dan. Pr. 1921, 1222. As to payment of the expenses of renewal, see 11 Geo. IV. & 1 Will. IV. c. 65, s. 14; Dan. Pr. 1918.

(*d*) As to the title, see Dan. Pr. 1918, note (*y*).

(*e*) See Seton, 695; Dan. Pr. 1918. For the practice as to settling leases at Chambers, see Dan. Pr. 1141, 1142; and *ante* Nos. 1092—1099, and notes thereto.

2258. Summons for the like in the case of an infant (*f*).

In the High Court of Justice,
Chancery Division.

[*Entitle the summons in the cause or matter in which the infant is a ward of Court, or wherein the administration of the estate of the infant, or his maintenance, is under the direction of the Court; and also in the matter of the Act: ante* No. 2257.]

Let [*&c.: Proceed as in* No. 881 *ante, to* noon], on the hearing of an application on the part of the above-named A. B., by C. D., of [*residence and addition*], his next friend, that the said C. D., or some other proper person, may be appointed, in the place of the said A. B., for the purposes following; namely:

1. To surrender, by deed, a certain indenture of lease, dated the —— day of ——, 18—, made between G. H. of the one part, and L. M. of the other part: whereby certain premises situate at, *&c.*, were demised to the said L. M. for the lives of N. O. and P. Q., and the life of the longest liver of them [*or as may be*]; and the beneficial interest in which said indenture of lease is vested in the said A. B.

2. To accept and take, in the place and for the benefit of the said A. B., a new lease of the premises comprised in the said indenture of lease, for and during the lives of the said N. O. and P. Q. [*or as may be*].

And that such surrender and new lease may be settled by the Judge (*g*).

Dated [*&c.: Conclude as in* No. 881 *ante*].

2259. Petition for the surrender of an existing lease, and grant of a new lease: where the reversion belongs to an infant, or a married woman (*h*).

[*Proceed as in* No. 2257 *ante, to* as follows:]

1. [*State the title of the petitioner to the reversion of the lease proposed to be surrendered.*]

2. [*State why such surrender is deemed expedient; and on what terms the new lease is to be granted.*]

Your petitioner therefore humbly prays, that he [*Or*, she] may be at liberty to accept a surrender of the said indenture of lease dated the ——, 18—; and to make and execute a new lease of the premises comprised in the said indenture for and during the lives of [*&c: Conclude as in prayer of* No. 2257 *ante*].

(*f*) See Cons. Ord. XXXV. 1 (5); Dan. Pr. 1917; and notes to No. 2257 *ante*. An ordinary summons is sufficient.

(*g*) See *ante* No. 2257, note (*e*).

(*h*) See 11 Geo. IV. & 1 Will. IV. c. 65, s. 16; Dan. Pr. 1919. For order in like case, see Seton, ed. 3, 695, No. 1. As to the effect of a surrender made and lease executed under the Act, see 11 Geo. IV. & 1 Will. IV. c. 65, s. 31; Dan. Pr. 1922. As to the payment of fines, &c., before renewal, see 11 Geo. IV. & 1 Will. IV. c. 65, s. 20; Dan. Pr. 1921. As to the application of the fines and premiums, see 11 Geo. IV. & 1 Will. IV. c. 65, s. 21; Dan. Pr. 1922. As to the power of the Court to authorise a renewal, where the person who ought to renew is out of the jurisdiction, see s. 18; and see 1 & 2 Vict. c. 62; and Dan. Pr. 1921.

2260.
Summons for the like, in the case of an infant (*i*).

[*Proceed as in* No. 2258 *ante, to* next friend :]
that the said A. B. may be at liberty to accept a surrender of a certain indenture of lease [*Describe it, see ante* No. 2258] ; and to make and execute a new lease of the premises comprised [*&c. : Conclude as in* No. 2257 *ante*]

2261.
Conditional contract to grant a lease of an infant's land (*j*)

[*See ante* No. 1178 : *which can be readily adapted.*]

2262.
Petition to carry the conditional contract into effect (*k*).

[*Proceed as in* No. 2257 *ante, to* as follows :]
1. [*State the title of the infant to the hereditaments proposed to be demised, showing that the case falls within section* 17.]
2. [*State the material parts of the conditional contract for the lease, showing that the terms are such as can be sanctioned under section* 17.]

Your petitioner therefore humbly prays, as follows :

1. That the said contract dated the ——, 187—, may be carried into effect.
2. That a proper lease in conformity with the said contract may be settled and approved by the Judge (*l*).
3. That your petitioner
   Or, That the said C. D., the guardian of your petitioner, in the name of your petitioner,

   may be at liberty to execute such lease when so settled.
4. That a counterpart of such lease may be executed by the said G. H., the lessee ; and be deposited for safe custody with the Clerks of the Records and Writs (*m*), until your petitioner attains his age of twenty-one years : with liberty to proper parties to have the use thereof in the mean time, for the pur-

(*i*) See Cons. Ord. XXXV. 1 (5) ; Dan. Pr. 1919 ; and note (*h*) to No. 2259 *ante*. An ordinary summons is sufficient.

(*j*) See 11 Geo. IV. & 1 Will. IV. c. 65, s. 17 ; Dan. Pr. 1919, 1920. As to the effect of a lease granted under the Act, see 11 Geo. IV. & 1 Will. IV. c. 65, s. 31 ; Dan. Pr. 1922.

(*k*) *Ibid.* For forms of orders, see Seton, 695, No. 2 ; 696, Nos. 3, 4.

(*l*) See *ante* No. 2257, note (*e*).

(*m*) Substituted for the Master's Office : see Cons. Ord. XLII. 3 ; and see Dan. Pr. 1920. For the mode of depositing documents in the Record and Writ Clerks' Office, see Dan. Pr. 1698 ; and see *ante*, note (*b*) to No. 1741.

pose of enforcing any of the covenants therein contained.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

2263. Summons to carry into effect conditional contract to grant a lease of an infant's land (*n*).

[*Proceed as in* No. 2257 *ante, to* next friend :]

1. That the conditional contract, dated the ——, 187—, entered into between E. F., on behalf of the said A. B., of the one part, and G. H. of the other part, for granting to the said G. H. a lease of certain land, therein described, which the said A. B. is seised or possessed of, or entitled to, in fee [*Or,* in tail ; *or as may be*], may be carried into effect.

2—4. [*Same as paragraphs* 2—4, *in prayer of* No. 2262 *ante: substituting* "the said A. B." *for* "your petitioner."]

2264. Affidavit in support of petition or summons to grant lease (*o*).

[*See ante* No. 1182, *which can be readily adapted.*]

SECTION XIII.—FINES AND RECOVERIES ABOLITION ACT (*p*).

2265. Petition for consent of the Court as protector of a settlement, in place of a person under disability (*q*

In the High Court of Justice,

Chancery Division.

[*Name of Judge.*]

In the matter of A. B., an infant [*or as may be*].

And in the matter of the Act 3rd and 4th William the Fourth, chapter 74, intituled "An Act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance."

To Her Majesty's High Court of Justice.

The humble petition of C. D., of [*residence and addition*].

Showeth as follows :

1. [*State the limitations of the settled estate; and the manner in which the person under disability became protector of the settlement.*]

2. [*State the nature of the disability of such person.*]

(*n*) See Cons. Ord. XXXV. 1 (5) ; Dan. Pr. 1919 ; and *ante*, notes to Nos. 2261 and 2262. An ordinary summons is sufficient. For order in like case, see *Francklin* v. *Edgell*, V.-C. K. at Chambers, 14 Jan. 1864, Reg. Lib. A. 156.

(*o*) See Dan. Pr. 1920.

(*p*) 3 & 4 Will. IV. c. 74, s. 33 ; Dan. Pr. 1923, 1924.

(*q*) See Dan. Pr. 1924. For order in like case, see Seton, 522, No. 1.

3. [*State how the petitioner has become tenant in tail of the settled estate.*]

4. Your petitioner is desirous of barring his estate tail in the said settled estate, and vesting the fee-simple thereof in himself.

Your petitioner therefore humbly prays, that this honourable Court will see fit: as protector of the settlement made by the said indenture of the ——, 18— [*or as may be*], in the place of the said A. B.: to consent to a disposition by your petitioner, under the provisions of the above-mentioned Act of Parliament, for the purpose of barring the estate tail of your petitioner in the hereditaments comprised in the said indenture; and that a proper deed for the purpose of barring such estate tail may be directed to be settled.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

SECTION XIV.—INVESTMENT ON REAL SECURITIES IN IRELAND ACT (*s*).

2266. Petition for leave to invest (*t*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the trusts of the will of A. B., deceased [*or as may be*].

And in the matter of the Act 4th and 5th William the Fourth, chapter 29, intituled "An Act for facilitating the loan of money upon landed securities in Ireland" (*x*).

To Her Majesty's High Court of Justice.

The humble petition of C. D., of [*residence and addition*].

Showeth as follows:

1. [*State such parts of the deed or will settling the trust fund as are material to the application.*]

2. [*State the present mode of investment of the fund proposed to be changed; and the rate of interest it produces.*]

3. [*State who are beneficially interested in the fund.*]

4. [*State the short particulars of the proposed investment; and its desirability.*]

Your petitioner therefore humbly prays, that the

(*s*) 4 & 5 Will. IV. c. 29; Dan. Pr. 1924, 1925.

(*t*) See Dan. Pr. 1925. For form of affidavit in support of the petition, see *ante* No. 1012. For order in like case, see Seton, ed. 3, 525. As to the persons to be served with the petition, see Dan. Pr. 1925.

(*x*) As to the title of the petition, see Dan. Pr. 1925.

said [*trustees*] may be authorised to sell so much of the said £—— consolidated £3 per cent. annuities [*or as may be*], as will raise the sum of £——; and to lend the money to arise by such sale upon the security of a mortgage of the said real estates of the said G. H., situate at ——, in Ireland: to be held by them upon the same trusts as they now hold the said annuities [*or as may be*].

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

Section XV.—The Copyhold Acts (*a*).

2267. Request for direction for payment in under the Copyhold Act (*b*).

Chancery.

To the Paymaster-General.

A direction is requested pursuant to the Copyhold Acts to enable [*Name the person to pay in*] to pay into Court the sum of £—— to the credit of "Ex parte the Copyhold Commissioners. The account of the manor of ——, in the county of —— [*State the name and locality of the particular manor in respect whereof the money is paid in*]," being the consideration money for the enfranchisement of land [*or as may be*], part of the said manor, whereof L. M. [*Name the lord of the manor*] is lord as tenant for life [*or as may be; State the particular disability or other reason for which the money is paid in*].

Dated —— day of ——, 187—.

[*Name and address of solicitor or party, as in* No. 92 *ante.*]

(*a*) See the Copyhold Act, 1842 (4 & 5 Vict. c. 35), ss. 73—75; the Copyhold Act, 1843 (6 & 7 Vict. c. 23), s. 14; the Copyhold Act, 1852 (15 & 16 Vict. c. 51), ss. 22, 39; the Copyhold Act, 1858 (21 & 22 Vict. c. 94), ss. 5, 13, 43—45; Dan. Pr. 1928—1930. See, also, the Universities and Colleges Estates Extension Act, 1860 (23 & 24 Vict. c. 59), s. 4; Dan. Pr. 1930. For a table of fees under the Acts, see W. N. (1869), Part II. 44.

(*b*) Money paid into Court under the Copyhold Acts is to be placed in the books at the Chancery Pay Office to the credit of "*Ex parte* the Copyhold Commissioners," the account of the particular manor in respect whereof the money is paid in; Chancery Funds Cons. Rules, 1874, rule 33. The money will be received into Court without any order; as to the mode of making a payment in, see *ante,* note (*o*) to No. 1974. The request for the direction to receive the money must state the name and locality of the manor; Chancery Funds Cons. Rules, 1874, rule 33.

2268. Summons for investment of money paid in, and for payment of dividends to tenant for life (*c*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Ex parte the Copyhold Commissioners.
In the matter of the settled estates of A. B., esquire.
And in the matter of the Copyhold Acts.

Let all parties [*Proceed as in* No. 865 *ante, down to* application] on the part of C. D., of [*residence and description*], the tenant for life of the manor of ——, in the county of ——.

1. That it may be referred to the Taxing Master to tax the costs of the applicant and of [*Name any other persons entitled to costs*], of this application and consequent thereon, as between solicitor and client.

2. That out of the £—— money on deposit in Court to the credit of "Ex parte the Copyhold Commissioners. The account of the manor of ——," the costs of the applicant may be paid to his solicitor, and the costs of —— to their solicitor.

3. That out of the residue of the said £——, money on deposit, the sum of £—— (being the amount of the interest which has been credited to the 31st of March, 187— [*Or*, the 30th of September, 187—] in respect of the said sum of £——, paid into Court to the like credit, while the same has been on deposit), and any interest to be credited in respect thereof, may be paid to the applicant C. D.

4. That the residue of the said sum of £—— money on deposit, after making the payments thereout hereinbefore mentioned, may be invested in consolidated £3 per cent. annuities, and that the dividends thereon as they accrue due during the life of the applicant C. D. may be paid to the said C. D. until further order.

Dated [*Conclude as in* No. 865 *ante*].

(*c*) See Dan. Pr. 1928. All applications under the Copyhold Acts respecting money or securities in Court, must be made by summons at Chambers; Chancery Funds Amended Orders, 1874, rule 15. The application is made by originating summons, for the practice as to which, see *ante* Nos. 865—880, and notes thereto. The summons is not to be served on the copyhold commissioners unless the Judge so directs; Chancery Funds Amended Orders, 1874, rule 15. For forms of orders, see Seton, ed. 3, 1094—1096.

Section XVI.—The Defence Acts (*l*).

2269. Summons for investment of compensation paid in by the War Department, and for payment of income to a tenant for life (*m*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of A. B., deceased [*or as may be*].
And in the matter of the Defence Act, 1860.

Let [*&c.: Proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of C. D., of [*residence and addition*]:

1. That the costs of the applicant of this application may be taxed, as between solicitor and client; and may be paid to his solicitor out of the £A. cash in Court to the credit of "In the matter of the Defence Act, 1860—The account of the devisees under the will of A. B., deceased" [*or as may be*]: being money paid into Court to the said credit by Her Majesty's Principal Secretary of State for the War Department, as compensation for certain lands settled by the will of the said A. B. [*or as may be*], required to be taken, and kept free from buildings, for the purposes of the Defence Acts, and any damage sustained in respect thereof [*or as may be*], and as an equivalent for the expenses consequent on such payment.

2. That the residue of the said £A. may be invested in consolidated £3 per cent. annuities [*or as may be*].

3. That the dividends as they accrue due on the said annuities during the life of the applicant C. D. may be paid to the applicant C. D. until further order.

Dated [*&c.: Conclude as in* No. 865 *ante; including the foot note*].

(*l*) Defence Act, 1842 (5 & 6 Vict. c. 94), ss. 25—28; amended by the Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117); 22 & 23 Vict. c. 21, s. 8; Defence Act, 1860 (23 & 24 Vict. c. 112), ss. 20—24, 29, 45; Defence Act Amendment Act, 1864 (27 & 28 Vict. c. 89). As to these Acts, see Dan. Pr. 1934—1937; Seton, ed. 3, 1091, *et seq.* The practice as to the payment in of compensation under these Acts is the same as in the case of payments in under the Lands Clauses Consolidation Act: as to which see Dan. Pr. 1861, *et seq.*; and *ante* Nos. 2202—2204, and notes thereto. As to service of notices on or by the Secretary of State for War, see 23 & 24 Vict. c. 112, s. 45; Dan. Pr. 1937.

(*m*) 5 & 6 Vict. c. 94, s. 26; amended by 22 & 23 Vict. c. 21, s. 8; 23 & 24 Vict. c. 112, ss. 23, 46; Dan. Pr. 1935, 1936. An original application at Chambers under these Acts is made by summons, in the form used for originating proceedings there: in other cases, by an ordinary summons. For the practice as to originating summonses, see *ante* Nos. 865—880, and notes thereto.

2270. Affidavit in support.

Formal parts: see ante No. 693.

1. [*State the settlement of the lands in question: see ante* No. 2205, *par.* 1, 2.]

2. [*State what lands were required by the War Department to be taken, and kept free from buildings, &c.; as thus:*] On or about the —— day of ——, 187—, Her Majesty's Principal Secretary of State for the War Department gave notice that certain lands situate in the parish of M., in the county of K., particularly specified in the first schedule to such notice, were required to be taken absolutely for the construction of works, under the powers and provisions of the Defence Act, 1860; and that certain other lands situate in the said parish, and specified in the second schedule to such notice, were required to be kept free from buildings and other obstructions, for the purposes of the said Act. The lands so required to be taken absolutely contained together by admeasurement — a. — r. — p., or thereabouts; and the lands so required to be kept free from buildings contained by admeasurement — a. — r. — p., or thereabouts: and all the said lands were part of the estates devised by the will of the said A. B. [*or as may be*].

3. [*State how the amount of compensation has been determined; as thus:*] By an agreement dated, *&c.*, made between me, this deponent, as devisee for life under the said will [*or as may be*] of the one part, and the said Principal Secretary of State of the other part, it was agreed that the sum of £A. should be the amount of the compensation to be paid for the lands so required to be taken, and kept free from buildings, and any damage sustained in respect thereof (*o*).

4. [*State the payment of the compensation into Court; as thus:*] On or about the —— day of ——, 187—, the said sum of £A.: together with £30 as an equivalent for the expenses consequent upon such payment, as provided by the Defence Act, 1860 (*p*): was paid by the said Principal Secretary of State into Court to the credit of "In the matter of the Defence Act, 1860—The account of the devisees under the will of A. B., deceased" [*or as may be*].

5. [*Negative right of any other person: see ante* No. 2209, *paragraph* 2.]

(*o*) See 23 & 24 Vict. c. 112, ss. 10, 11.
(*p*) *Ibid.*, s. 21; Dan. Pr. 1934.

[*See prayer of* No. 2206 *ante: which can be readily adapted.*]

2271. Summons for investment of fund in the purchase of real estate (*q*).

[*See statements in* No. 2270 *ante, and the prayer of* No. 2177 *ante: which can be readily adapted.*]

2272. Petition for transfer and payment of fund to absolute owner (*r*).

SECTION XVII.—IMPROVEMENT OF LAND ACT, 1864 (*s*).

2273. Summons for directions that the Inclosure Commissioners may proceed with improvements, notwithstanding dissent (*t*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the settled estates of A. B., deceased [*or as may be*].
And in the matter of the Improvement of Land Act, 1864.

Let [*&c.: Proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of C. D., of [*residence and addition*], that the Inclosure Commissioners for England and Wales may be authorised to entertain and proceed with the application which has been made to them by the said C. D., for their sanction to [*Describe the proposed improvement*], under the provisions of the above-mentioned Act: notwithstanding the dissent from such application of E. F. [*or other circumstance*].

Dated [*&c.: Conclude as in* No. 865 *ante: including the foot note*].

SECTION XVIII.—THE INCLOSURE ACT, 1845 (*u*).

2274. Petition for application of fund paid into Court under the Inclosure Act (*x*).

[*The forms given ante* Nos. 2205 *and* 2206, *of applications under the Lands Clauses Consolidation Act, and ante* No. 2268, *of an application under the Copyhold Acts, can readily be adapted to an application by petition under the* 8 & 9 *Vict. c.* 118. *The title of such a petition may run thus:*]

In the matter of the settled estates of A. B., deceased [*or as may be*].
And in the matter of the Acts for the Inclosure, Exchange, and Improvement of Land (*y*).

(*q*) See note (*l*) at p. 1221 *ante*; Dan. Pr. 1935, 1936.
(*r*) See *Ibid.*
(*s*) 27 & 28 Vict. c. 114; see Dan. Pr. 1937, 1938.
(*t*) 27 & 28 Vict. c. 114, s. 21; Dan. Pr. 1938. The application is made by an originating summons, for the practice as to which, see *ante* Nos. 865—880, and notes thereto.
(*u*) 8 & 9 Vict. c. 118, ss. 134, 137—140; Dan. Pr. 1939.
(*x*) *Ibid.*
(*y*) 15 & 16 Vict. c. 79, s. 34.

Section XIX.—The Merchant Shipping Acts, 1854, and 1855 (*z*).

2275.

Petition for sale of a ship, or of share of a ship, vested by transmission in an unqualified owner (*a*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the ship "City of London" [*or as may be*].
And in the matter of the Merchant Shipping Act, 1854.
To Her Majesty's High Court of Justice.
The humble petition of A. B., of [*residence and addition*].
Showeth as follows:
1. [*State the registry in England of the ship, or share of ship, to which the petition relates.*]
2. [*State how the property in such ship or share has become vested by transmission on the death of an owner, or on the marriage of a female owner, in the petitioner; and that he is a person not qualified to be an owner of a British ship.*]
Your petitioner therefore humbly prays, as follows:
1. That the said ship [*Or*, share] may be directed to be sold, and the proceeds thereof paid to your petitioner, or otherwise disposed of in such manner as to this Court may seem fit.
2. That the right to transfer the said ship [*Or*, share] to the purchaser thereof may be declared to be vested in C. D., of [*residence and addition*]; or in such other person as to this Court may seem fit.
Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

2276.

Motion paper for interim order to prohibit the dealing with a ship, or share of a ship (*c*).

Formal parts: see ante No. 1570.
To move on behalf of A. B., of [*residence and addition*], that any dealing with the ship [*Or*, the share of C. D. of the ship] called the —— may be prohibited until, *&c.*, *&c.*

(*z*) Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 62—65, 514; Merchant Shipping Amendment Act, 1855 (18 & 19 Vict. c. 91), s. 10; Merchant Shipping Amendment Act, 1862 (25 & 26 Vict. c. 63). As to these Acts, see Dan. Pr. 1937—1941.

(*a*) See 17 & 18 Vict. c. 104, ss. 62—64; Dan. Pr. 1939, 1940.

(*c*) See 17 & 18 Vict. c. 104, s. 65; Dan. Pr. 1940. For interim order on *ex parte* motion under s. 65, see *Re City of Mobile*, V.-C. S., 11 Dec. 1866, Reg. Lib. A. 2590; and for further order, discharging (by consent) the interim order, see S. C., V.-C. S. 24 Dec. 1866, Reg. Lib. A. 2679. As to injunctions in the case of ships, see Dan. Pr. 1503; and *ante* No. 1619, and note thereto.

2277. Petition to prohibit a like dealing (*c*).

[*Proceed as in* No. 2275 *ante, to the end of par.* 1.]

2. [*State the interest of the petitioner in the ship or share; and the grounds for requiring the interposition of the Court.*]

Your petitioner therefore humbly prays, that any dealing with the said ship [*Or,* share] may be prohibited until, *&c., &c.*

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

SECTION XX.—LAW OF PROPERTY AMENDMENT AND TRUSTEES RELIEF ACTS (*d*).

2278. Petition to establish sale under a power where part of purchase-money has been erroneously paid to a tenant for life (*e*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the settled estates of A. B. [*or as may be*].

And in the matter of the Act 22nd and 23rd Victoria, chapter 35, intituled "An Act to further amend the law of property, and to relieve trustees."

To Her Majesty's High Court of Justice.

The humble petition of C. D., of [*residence and addition*].

Showeth as follows:

1. [*State the settlement of the estate in question.*]

2. [*State the sale thereof, with the timber thereon, or other articles attached thereto.*

3. [*State the manner in which the purchase money has been paid: showing that the tenant for life, or other party to the transaction, has erroneously received for his own benefit a portion of the purchase money as the value of the timber or other articles.*]

Your petitioner therefore humbly prays, as follows:

1. That it may be declared that, upon payment by him [*Or,* by the said purchaser E. F.] of the full value of the said timber and articles [*or as may be*], at the time of the said sale thereof: with such interest thereon as this honourable Court may think fit to direct: and the settlement of the said principal moneys and interest under the direction of this honourable Court, upon such parties as in the

(*c*) See note (*c*) to No. 2276 *ante.*

(*d*) 22 & 23 Vict. c. 35, ss. 13, 30; 23 & 24 Vict. c. 38, s. 9; Ord. 20 Mar. 1860; and Dan. Pr. 1942—1945.

(*e*) See 22 & 23 Vict. c. 35, s. 13; Dan. Pr. 1942.

opinion of this honourable Court shall be entitled thereto, the said sale ought to be established.

2. That upon such payment and settlement as aforesaid being made, the said sale may be declared to be valid.

3. That the costs of this application, as between solicitor and client, may be paid by your petitioner [*Or*, by the said E. F.].

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

2279.

Summons to establish a sale under a power (*g*).

In the High Court of Justice,

Chancery Division.

[*Name of Judge.*]

In the matter [*&c.: as in* No. 2278 *ante*].

Let [*&c.: Proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of C. D., of [*residence and addition*]:

1. That [*&c.: Adapt the prayer of* No. 2278 *ante*].

Dated [*&c.: Conclude as in* No. 865 *ante; including the foot note*].

(*g*) See 22 & 23 Vict. c. 35, s. 13; Dan. Pr. 1942. The application is made by an originating summons: for the practice as to which see Dan. Pr. 1050, *et seq.*; and see *ante* Nos. 865—880 and notes thereto.

2280. Petition for a judicial opinion, advice, or direction (*h*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of [*Describe the particular trust, will, or administration* (*k*) *; as thus :*]
the trusts of the marriage settlement of A. B. and C. his wife, dated, *&c.*
Or, the will of A. B., deceased.
Or, the administration of the estate of A. B., deceased.

And in the matter of the Act [*&c.: as in* No. 2278 *ante*].

To Her Majesty's High Court of Justice.

The humble petition of E. F., of [*residence and addition*], and G. H., of, *&c.* (*l*).

Showeth as follows :

1. } [*State the facts, concisely: divided into paragraphs, num-*
2. } *bered consecutively* (*m*).]
3. }

The opinion, advice, or direction of this honourable Court is desired upon the following questions :

1. Whether } [*State the questions respecting the*
2. Whether } *management or administration of the*
3. Whether } *trust property, or the assets of the*
4. Whether } *testator or intestate, upon which an opinion, &c., is desired.*]

5. In what manner the costs of this application should be paid or provided for (*n*).

(*h*) See 22 & 23 Vict. c. 35, s. 30; 23 & 24 Vict. c. 38, s. 10; Ord. 20 Mar. 1860; and Dan. Pr. 1942—1945; Seton, ed. 4, 491—493; Morg. 252—255. No signature of counsel to the petition is necessary; 36 & 37 Vict. c. 66, s. 100; R. S. C. Ord. XIX. 4; *ib.*, Ord. LXIII. For a judicial opinion on petition, see *Re Kensington Proprietary School*, M. R., 30 July, 1870, Reg. Lib. A. 2638; Seton, ed. 4, 491, 492.

(*k*) As to the title, see Ord. 20 Mar. 1860, rule 1; Dan. Pr. 1944.

(*l*) As to who may apply, and on whom the petition or summons is to be served, see Dan. Pr. 1942, 1944.

(*m*) Ord. 20 Mar. 1860, rule 1; Dan. Pr. 1944.

(*n*) See 22 & 23 Vict. c. 35, s. 30; Dan. Pr. 1943, 1945. As to the costs, see Ord. 20 Mar. 1860, rule 5.

2281.
Summons for a judicial opinion, advice, or direction (*p*).

In the High Court of Justice,
Chancery Division,
[*Name of Judge.*]
In the matter [*&c.: as in* No. 2280 *ante.*]

Let [*&c.: Proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of E. F., of [*residence and addition*], and G. H., of, *&c.*: the trustees of the above-mentioned settlement [*or as may be*]: for the opinion, advice, or direction of the Judge on the facts and questions submitted by their statement left in my Chambers this day.

Dated [*&c.: Conclude as in* No. 865 *ante: including the foot note*].

2282.
Statement in support (*q*).

[*Proceed as in* No. 2280 *ante, to the end of the title: and continue thus:*]

Statement of E. F., of, *&c.*, and G. H., of, *&c.*, for the opinion, advice, or direction of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor Sir ——], under the provisions of the above-mentioned Act.

1. } [*State the facts, concisely: divided into paragraphs, num-*
2. } *bered consecutively; and the questions: as in* No. 2280
3. } *ante.*]

[*Signature of counsel* (*r*).]

(*p*) See Dan. Pr. 1942, 1944. For judicial opinions on summons, see *Re Browne*, M. R. at Chambers, 14 Jan. 1864, Reg. Lib. A. 37; *Re Faning*, V.-C. S. at Chambers, 19 Feb. 1864, Reg. Lib. A. 328. The application at Chambers is made by an originating summons: for the practice as to which, see Dan. Pr. 1050, *et seq.*; and see *ante* Nos. 865—880, and notes thereto.

(*q*) See 23 & 24 Vict. c. 38, s. 9; Dan. Pr. 1942, 1944. As to the filing of the statement, and passing and entering the opinion, &c., see *Ibid.*; Ord. 20 Mar. 1860, rule 4; Dan. Pr. 1945.

(*r*) See 23 & 24 Vict. c. 38, s. 9; Dan. Pr. 1944.

SECTION XXI.—THE DECLARATION OF TITLE ACT, 1862 (*d*).

2283. Petition for a declaration of title (*e*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of A. B.
And in the matter of "The Declaration of Title Act, 1862."

To Her Majesty's High Court of Justice.

The humble petition of A. B., of [*residence and addition* (*f*)].

Showeth as follows:

1. [*Show the nature of the estate or interest of the petitioner in the lands respecting which the declaration is sought.*]

2. [*Set out an exact description, in their actual state, of the lands as to which the declaration is sought: stating particularly the boundaries thereof, and the lands on which the same and every part thereof abut; and, so far as conveniently may be, the names and descriptions of the owners and occupiers of such last-mentioned lands* (*g*).]

3. [*State what incumbrances, estates, rights, and interests, if any, the petitioner admits to affect his title, and subject to which he seeks to have his title declared* (*h*).]

Your petitioner therefore humbly prays, that it may be declared that under the provisions of the said Act of Parliament your petitioner is entitled to the lands hereinbefore described for an absolute estate of inheritance in fee simple in possession, free from incumbrances [*or as may be; and state any restrictions, reservations or qualifications* (*i*)].

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

(*d*) 25 & 26 Vict. c. 67; Dan. Pr. 1957—1966. No General Orders under this Act have yet been made.

(*e*) See 25 & 26 Vict. c. 67, s. 1; Dan. Pr. 1957, *et seq.* For petition in like case, see *Re Roberts;* petition filed 21 Feb. 1870; and for the order thereon, directing an inquiry as to the petitioner's title, see S. C. 12 Feb. 1870, Reg. Lib. B. 308, V.-C. J. For further order (on the Chief Clerk's certificate in favour of the title), directing the declaration establishing the petitioner's title to be made at the end of three months—security for costs to be given—and notice of the order to be advertised three times, at three days' interval, in each of three London newspapers (the property being in London), see S. C. 23 June, 1870, Reg. Lib. B. 2479; 10 Eq. 402, V.-C. J. And for the final order, establishing the title, see S. C. 9 Dec. 1870, Reg. Lib. B. 3024; W. N. (1870) 242, V.-C. B.; and see Dan. Pr. 1959. For form of the advertisement, see *post* No. 2285. As to proceedings on a petition under this Act, see 25 & 26 Vict. c. 67, s. 5, *et seq.;* and Dan. Pr. 1958, *et seq.*

(*f*) As to who may petition, see 25 & 26 Vict. c. 67, ss. 1, 3; Dan. Pr. 1957.

(*g*) 25 & 26 Vict. c. 67, Sched. rule 1; Dan. Pr. 1957.

(*h*) 25 & 26 Vict. c. 67, s. 2; Dan. Pr. 1957.

(*i*) 25 & 26 Vict. c. 67, s. 15; Dan. Pr. 1960, 1961.

2284.

Affidavit that all documents have been produced (*k*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title; see ante* No. 2283.]

We, A. B., of [*residence and addition*], the petitioner in this matter, and C. D., of [*place of business*], the solicitor in this matter for the said A. B., severally make oath and say, as follows:

1. To the best of our respective knowledge, information, and belief, all settlements, deeds, documents, instruments, maps, plans, and papers relating to the title to the land in question in this matter have been produced to this honourable Court, or the cause of their non-production has been fully and fairly explained; and all facts material to the title to the said land have been fully and fairly disclosed to this honourable Court.

Sworn [*&c.: see ante* No. 696 *or* 698].

2285.

Notice or advertisement of order *nisi*, directing a declaration of title to be made (*l*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title, as in order.*]

Pursuant to the above-mentioned Act of Parliament, notice is hereby given that, upon the further hearing: adjourned by an order dated the 12th Feb., 187—: of the petition of J. R., by M. D. his guardian, preferred in this matter on the 10th Feb., 187—, unto Her Majesty's High Court of Justice, it was, by an order of the said Court dated the 23rd June, 187—, ordered that the petitioner should give security as therein mentioned; and it was thereby declared and ordered that, on and after the 2nd Nov. 187—, on such security being given, a declaration should be made that the petitioner is entitled to one undivided moiety of the messuage, *&c.*, situate at, *&c.* [*as in order*]: unless, in the meantime, good cause be shown to the contrary. And take notice that a copy of the said order, together with a description of the property in question, is deposited at the office of Mr. G. P. P., situate at, *&c.*; and that notice of such deposit has been affixed on the premises in question; and that, in pursuance of the said order, the before mentioned security has been given.

Dated this —— day of ——, 187—.

G. P. P., of [*Address*],
Solicitor for the Petitioner.

(*k*) See 25 & 26 Vict. c. 67, s. 10; Dan. Pr. 1959. As to dispensing with the affidavit, see *Ibid.*

(*l*) See *Re Roberts*, *ante* No. 2283, note (*e*); and see 25 & 26 Vict. c. 67, s. 11; *Ibid.*, Sched. rules 4—7; Dan. Pr. 1959, 1960.

SECTION XXII.—THE CONFIRMATION OF SALES ACT (*n*).

2286. Petition for authority to dispose of land: reserving the minerals; or of the minerals: apart from the land (*o*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the trusts of the settlement made on the marriage of J. W. and H. his wife.
And in the matter of the Act 25th & 26th Victoria, chapter 108, intituled "An Act to confirm certain sales, exchanges, partitions, and enfranchisements by trustees and others."

To Her Majesty's High Court of Justice.

The humble petition of W. H., of, *&c.*, S. W. U., of, *&c.*, J. W., of, *&c.*, and H. his wife, and of [*eight infants*], by the said J. W. their father and next friend.

Showeth as follows:

1—21. [*Statements showing that, under the settlement mentioned in the title, certain hereditaments were vested in the petitioners W. H. and S. W. U., in trust for the other petitioners: with power to sell, and lease; and that such settlement contained no provision forbidding the disposition of the premises therein comprised with an exception or reservation of any minerals.*]

22. The lands and hereditaments now subject to the trusts of the said indenture of the 30th May, 1843, are suitable for sale in lots for building, and contain mines, minerals, and coals: the reservation of which out of the grants of the said lands would not lessen the value of the said lands for building purposes, but would, by the separate sale of such mines, minerals and coals, be of great profit to the persons beneficially entitled under the said indenture.

Your petitioners therefore humbly pray, that the said W. H. and S. W. U., or the survivor of them, or other the trustees or trustee for the time being of the said indenture of the 30th May, 1843, may be at liberty to exercise all or any of the trusts, powers and authorities of the said indenture: so as to dispose of the land and hereditaments now held under and subject to the trusts of the said indenture, with an exception or reservation of the coals, mines and minerals in and under the same; and the rights and powers of, or incidental to the working, getting, or carrying away of such coals, mines and minerals; and so as to dispose of the coals, mines and minerals with such rights or powers separately from the residue of the land;

(*n*) 25 & 26 Vict. c. 108; Dan. Pr. 1967; Morg. 268—269.

(*o*) *Ibid.* For petition in like case, see *Re Willwey*; filed 4 Mar. 1863; and for the order thereon, see S. C. 21 Feb. 1863, Reg. Lib. B. 364; 32 L. J. Ch. 226; 1 N. R. 469, V.-C. W. As to the service of the petition, see Dan. Pr. 1967.

and in either case without prejudice to any future exercise of the said trusts, powers and authorities with respect to the excepted coals, mines or minerals, or (as the case may be) the undisposed of land.

Or that [*Concluding as in* No. 1578 *ante; and foot note,* No. 1579].

SECTION XXIII.—THE JUDGMENTS ACT, 1864 (*p*).

2287. Petition for sale of lands extended.

[*Same as* No. 1328 *ante.*]

SECTION XXIV.—THE MORTGAGE DEBENTURE ACTS, 1865 AND 1870 (*q*).

2288. Summons for the discharge of a satisfied registered security (*r*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of the —— Company.
And in the matter of the Mortgage Debenture Acts, 1865 and 1870.

Let [*&c.: Continue as in* No. 865 *ante, to* noon], on the hearing of an application on the part of A. B., of [*residence and addition*], that the above-named —— Company may be ordered to show cause why the entry in the Register of Securities of the said company of the [*Describe the security required to be discharged*], is not discharged from the charge of the mortgage debentures issued by the said company. Dated [*&c.: Conclude as in* No. 865 *ante; including the foot note*].

2289. Petition to appoint a receiver, at instance of owner of an overdue debenture (*t*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title: as in* No. 2288 *ante.*]
To Her Majesty's High Court of Justice.
The humble petition of A. B., of [*residence and addition*].
Showeth as follows:
1. [*Recite the mortgage debenture; as thus:*] By an instrument

(*p*) 27 & 28 Vict. c. 112, ss. 4—6; Dan. Pr. 897, 898; Morg. 270—272; *ante* note (*j*) at p. 721.

(*q*) 28 & 29 Vict. c. 78, 33 & 34 Vict. c. 20. As to these Acts, see Dan. Pr. 1968—1970; and Land Registry Rules, 14 Nov. 1865; W. N. (1866), Pt. II. 243; 12 Jur. N. S. Pt. II. 290.

(*r*) See 28 & 29 Vict. c. 78, s. 16; Dan. Pr. 1968. The application is made by an originating summons: for the practice as to which, see *Ibid.*, 1050, *et seq.*; and see *ante* Nos. 865—880, and notes thereto.

(*t*) See 28 & 29 Vict. c. 78, ss. 42—47; Dan. Pr. 1967, 1969.

under the common seal of the above-named —— Company, dated the ——, 187—, numbered ——, and duly signed in accordance with the provisions of the Mortgage Debenture Act, 1865, the said company, by virtue of the said Act, and in consideration of the sum of £—— paid to them by your petitioner, thereby charged all the registered securities of the company with the payment to him, his executors, administrators, and assigns, of the sum of £——, and interest thereon at the rate of £— per cent. per annum: such sum of £—— to be paid and payable to your petitioner, his executors, administrators, and assigns, at ——, on the —— day of ——, 18—: with interest on the same at the rate aforesaid, payable half-yearly, at the said place, on every —— day of ——, and —— day of ——: And the said company thereby undertook to pay the said sum of £——, and interest at the rate aforesaid, as above mentioned.

2. [*Show that default has been made in payment of the principal, or interest.*]

3. [*Show that a demand of payment has been made in writing, and not complied with.*]

Your petitioner therefore humbly prays, that some proper person may be appointed on behalf of your petitioner, and all other persons entitled to the mortgage debentures of the said company, to receive all the principal moneys, instalments, annuities, interest, and other moneys from time to time payable to the said company upon, or in respect of, their registered securities, and any cash or other moneys in this honourable Court, on the account of the said company's mortgage debentures: until the principal and interest due on all the debentures issued by the said company: together with all costs: including the reasonable and proper charges of such receiver: shall have been fully paid; or until further order.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579.]

2290. Summons to appoint a receiver, at instance of owner of an overdue debenture (*u*).

[*Title: as in* No. 2288 *ante.*]

Let [*&c.: Proceed as in* No. 865 *ante, to* noon], on the hearing of an application on the part of A. B., of [*residence and addition*], a debenture holder of the above-named company: that some proper person may be appointed on behalf of the applicant, and all other persons entitled [*Continue as in prayer of* No. 2289 *ante, to* further order].

Dated [*&c.: Conclude as in* No. 865 *ante: including the foot-note*].

(*u*) See note (*t*) to No. 2289 *ante*. The application at Chambers should be by an originating summons; for the practice as to which, see Dan. Pr. 1050, *seq.*; and *ante* Nos. 865—880, and notes thereto.

Section XXV.—Reduction of Capital.—Companies Acts, 1867 and 1877 (*h*).

2291. Petition for order confirming reduction of capital (*i*).

In the High Court of Justice,

Chancery Division.

[*Name of Judge.*]

In the matter of the W. F. Company, Limited and Reduced (*l*).

And in the matter of the Companies Acts, 1867 and 1877 (*m*).

To Her Majesty's High Court of Justice.

The humble petition of the W. F. Company, Limited and Reduced (*l*).

Showeth as follows :

1. The W. F. Company, Limited and Reduced (*l*), is a joint-stock company, formed and registered in England, under the provisions of the Companies Act, 1862.

2. The registered office of the company is situate at, *&c.*, in the City of London.

3. The company was formed by a memorandum of association, dated the 11th day of March, 1864 : which was as follows [*Memorandum set out*].

(*h*) 30 & 31 Vict. c. 131 ; 40 & 41 Vict. c. 26 ; Ord. 21 Mar. 1868 (L. R. 3 Ch. xlix.) ; Dan. Pr. 1978—1988. The provisions of the Companies Act, 1867, do not apply to a reduction of capital by the cancellation of shares which have not been taken or agreed to be taken by any person, where such cancellation is authorised by the regulations of the company as originally framed, or as altered by special resolution ; such a reduction of capital may be effected without any application to the Court ; Companies Act, 1877 (40 & 41 Vict. c. 26), s. 5. As to the power of the Court to require the company to publish the reasons for the reduction of capital or other information in regard thereto, see 40 & 41 Vict. c. 26, s. 4 ; *Re Llynvi and Ogmore Coal and Iron Co.*, 26 W. R. 55.

(*i*) See *Re Warrant Finance Company :* petition presented 29 April, 1870, and filed 17 Aug. 1870. For the final order made thereon, see *post* No. 2307. And see 30 & 31 Vict. c. 131, s. 11 ; Dan. Pr. 1979.

(*l*) As to the addition "and reduced," see 30 & 31 Vict. c. 131, s. 10 ; 40 & 41 Vict. c. 26, s. 4 ; Dan. Pr. 1979. Where the reduction of the capital does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, it is not necessary before the presentation of the petition for confirming the reduction to add, and the Court may (if it thinks it expedient) dispense altogether with the addition of, the words "and reduced ;" 40 & 41 Vict. c. 26, s. 4 (2) ; in *Re Langdale Chemical Manure Co., Limited*, 26 W. R. 434, the Court dispensed with the addition of these words during the interval between the presentation and the hearing of the petition. For form of application in like case, see *post* No. 2291 a.

(*m*) The petition, and all notices, affidavits, and other proceedings thereunder, must be intituled in the matter of the Companies Act, 1867, and of the Company in question ; Ord. 21 Mar. 1868, rule 2 ; Dan. Pr. 1980.

4. By a special resolution passed on the 4th day of May, 1864, it was resolved that the name of the company should be changed to the W. F. Company, Limited.

5. As appears by the said memorandum of association, the nominal capital of the company is £2,000,000, divided into 40,000 shares of £50 each.

6. The company is governed by articles of association duly registered with the said memorandum of association: as the said articles of association have from time to time been altered by special resolution duly registered under the Companies Act, 1862.

7. The first clause of the said articles of association, as the same has been altered by a special resolution, contains words as follows: "The business of the company may be commenced when three-fourths of one-half of the capital of the company shall have been subscribed for, and the deposit of £5 per share paid thereon."

8. Three-fourths of one-half of the capital of the company were subscribed for; and the deposit of £5 per share was paid on the shares so subscribed for. The business of the company was duly commenced, and calls have been made: so that, inclusive of the said £5 per share deposit, the sum of £12 per share has been called up. The 26th clause of the said articles of association, as the same was, on or before the 12th day of April, 1870, altered by special resolution, contains words as follows: "The company may, by special resolution, so far modify the conditions contained in its memorandum of association as to reduce its capital to such an amount, and in such shares, as shall by the special resolution be specified."

9. At an extraordinary general meeting of the members of the company, duly convened, and held at the registered office of the company, situate at, *&c.*, in the City of London, on Tuesday, the 12th day of April, 1870, the following resolution was duly passed —and at a subsequent general meeting of the members of the company, also duly convened and held at the same place on Thursday, the 28th day of April, 1870, the following special resolution was duly confirmed—that is to say: "That the memorandum of association shall be altered, by erasing therefrom the following: 'The nominal capital of the company to be £2,000,000 divided into 40,000 shares of £50 each;' and inserting therein the following: 'The nominal capital of the company to be £240,000, divided into 20,000 shares of £12 each'" (*n*).

Your petitioners therefore humbly pray, that an order may be made confirming the reduction of the capital of the company; and that for that purpose all proper directions may be given.

Or that [*Concluding as in* No. 1578 *ante*].

NOTE.—It is not intended to serve this petition upon any person.

(*n*) See 30 & 31 Vict. c. 131, s. 9; 40 & 41 Vict. c. 26, s. 4; Dan. Pr. 1978. The minute is now required to show also the amount (if any) proposed to be deemed to have been paid up on each share at the date of the registration of the minute; 40 & 41 Vict. c. 26, s. 4.

2291a. Motion paper to dispense with the addition of the words "and reduced" during the interval between the presentation and the hearing of the petition (*nn*).

Title: see ante No. 2291 (*p*); *other formal parts: see ante* No. 1570.

To move on behalf of the above-named Company, that the addition of the words "and reduced" after the name of the said Company may be dispensed with during the period which shall elapse between the presentation of the petition in this matter on the —— day of ——, 187—, and the hearing of the said petition.

2292. Summons for directions as to settling list of creditors (*o*).

Formal parts: see ante No. 881 (*p*).

on the part of the above-named company, for directions as to the proceedings to be taken for settling the list of their creditors entitled to object to the proposed reduction of the capital of the company, as in their petition presented in this matter on the —— day of ——, 187—, mentioned.

2293. Order thereon (*q*).

Master of the Rolls [*Or*, Vice-Chancellor Sir ——] [*Date.*]
at Chambers.

In the matter of the —— Company, Limited and Reduced.

And in the matter of the Companies Act, 1867.

Upon the application of the petitioners by summons, dated the ——, 187—, and upon hearing the solicitor for the petitioners, and on reading the petition on the —— day of ——, 187—, preferred unto Her Majesty's High Court of Justice: it is ordered that an inquiry be made what are the debts, claims, and liabilities of or affecting the said company on the —— day of ——, 187—; and that notice (*r*) of the presentation of the said petition be in-

(*nn*) The Companies Act, 1877 (40 & 41 Vict. c. 26), s. 4 (2); *Re Langdale Chemical Manure Co., Limited*, 26 W. R. 434; *ante* note (*l*) to No. 2291.

(*o*) Where the reduction of the capital does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the company are not (unless the Court otherwise direct) entitled to object, nor is their consent required, to the reduction; 40 & 41 Vict. c. 26, s. 4 (1); but otherwise every creditor of the company is entitled to object to the reduction; 30 & 31 Vict. c. 131, s. 13; Dan. Pr. 1979. As to the power of the Court to dispense with the consent of any creditor to the reduction, see 30 & 31 Vict. c. 131, s. 14; Dan. Pr. 1980. As to settling a list of the creditors who are entitled to object, see 30 & 31 Vict. c. 131, s. 13; Ord. 21 Mar. 1868, rule 4; Dan. Pr. 1980, 1981. The application for directions as to settling the list is made *ex parte*, by an ordinary summons after the petition has been presented; Dan. Pr. 1981.

(*p*) As to the title, see *ante* No. 2291, note (*m*).

(*q*) Ord. 21 Mar. 1868, rule 4, and Sched. No. 1; Dan. Pr. 1981. For order in like case, see *Re Warrant Finance Company*, M. R. at Chambers, 3 May, 1870, Reg. Lib. B. 1219.

(*r*) See *post* No. 2294.

serted in the [*Describe the newspapers, and the days on which the insertions are to be made* (*s*)] ; and that a list (*t*) of the persons who are creditors of the company on the said —— day of ——, and an office copy of the affidavit (*u*) verifying the same, be left at the Chambers of the Judge on or before the —— day of —— (*x*).

2294.

Notice of presentation of the petition (*y*).

In the matter of [*&c. : as in the petition* (*z*)].

Notice is hereby given, that a petition for confirming a resolution reducing the capital of the above company from £—— to £——, was on the —— day of ——, 187—, presented to Her Majesty's High Court of Justice, and is now pending ; and that the list of creditors of the company is to be made out as for the —— day of ——, 187—.

C. and D., of [*place of business*],
[Agents for A. and B., of, *&c.*],
solicitors to the company.

2295.

Affidavit verifying list of creditors (*a*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of [*&c. : as in the petition* (*z*)]
I, A. B. of, *&c.* (*b*), make oath and say, as follows :
1. The paper writing now produced and shown to me, and

(*s*) The first insertion is not to be less than one calendar month before the day of the date fixed with reference to which the list of creditors is to be made out ; Ord. 21 Mar. 1868, rule 5 ; Dan. Pr. 1981. In *Re Warrant Finance Company* (a London company), *ubi sup.*, the notice of the presentation of the petition was directed to be advertised once in the London Gazette, and twice (with a week's interval) in the Times, and another London paper, and the office copy of the affidavit was directed to be left at the expiration of a week after the date fixed as to the list of creditors. In *Re Credit Foncier of England*, L. R. 11 Eq. 357, V.-C. B., one insertion in the London Gazette, and three in each of three London papers, were directed ; and see *post* No. 2307, note (*d*).

(*t*) See *post* No. 2296.

(*u*) See *post* No. 2295.

(*x*) The Judge is to fix the date with reference to which the list of creditors is to be made out ; and give directions as to the advertisements, and the verification of the list ; and fix the time within which the affidavit is to be filed, and the list and office copy left ; see Ord. 21 Mar. 1868, rules 4—6 ; Dan. Pr. 1981.

(*y*) See Ord. 21 Mar. 1868, rule 5, and Sched. No. 2 ; Dan. Pr. 1981 ; and see *ante* No. 2293. As to the power of the Court to require the Company to publish the reasons for the reduction of capital, or other information in regard thereto, see 40 & 41 Vict. c. 26, s. 4 ; *Re Llynvi and Ogmore Coal and Iron Co.*, 26 W. R. 55.

(*z*) See *ante* No. 2291, note (*m*).

(*a*) See Ord. 21 Mar. 1868, rules 6, 7, and Sched. No. 3 ; Dan. Pr. 1981 ; and see *ante* No. 2293.

(*b*) The affidavit is to be made by some officer or officers of the company competent to make the same ; Ord. 21 Mar. 1868, rule 6 ; Dan. Pr. 1981.

marked with the letter A. (*c*), contains a list of the creditors of, and persons having claims upon, the said company on the —— day of ——, 187— (the date fixed by the order in this matter, dated the ——, 187— (*d*)): together with their respective addresses, and the nature and amount of their respective debts or claims; and such list is, to the best of my knowledge, information, and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid (*e*), any debt or claim which, if such date were the commencement of the winding-up of the said company, would be admissible in proof against the said company, other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the [*State what office deponent holds in the company* (*f*)] of the said company, and from information derived upon investigation of the affairs and the books, documents, and papers of the said company (*g*).

Sworn [*&c.: see ante* No. 696].

2296. List of creditors: being exhibit A. to No. 2295 (*h*).

A.

In the matter of [*&c.: as in the petition* (*i*)].

This list of creditors, marked A., was produced and shown to A. B., and is the same list of creditors as is referred to in his affidavit sworn before me this —— day of ——, 187—:

X. Y., *&c.*

Names, addresses, and description of the creditors.	Nature of debt or claim.	Amount of debt or claim.

(*c*) See *post* No. 2296.

(*d*) See *ante* No. 2293.

(*e*) That is, the date fixed by the order with reference to which the list of creditors is to be made out.

(*f*) See note (*b*), *supra*.

(*g*) See Ord. 21 Mar. 1868, rule 7; Dan. Pr. 1981.

(*h*) See *ante* No. 2295, and notes thereto. As to inspecting and taking extracts from the list, see Ord. 21 Mar. 1868, rule 8: as amended by Ord. 2 Mar. 1869; Dan. Pr. 1982.

(*i*) See *ante* No. 2291, note (*m*).

2297.
Notice by post to creditors entered in list (*k*).

In the matter of [*&c. : as in the petition* (*l*)].

To [*Name of creditor*].

You are requested to take notice, that a petition has been presented to Her Majesty's High Court of Justice to confirm a special resolution of the above company, for reducing its capital to £—— (*m*); and that in the list of persons admitted by the company to have been, on the —— day of ——, 187—, creditors of the company, your name is entered as a creditor for [*Here state the amount of the debt or nature of the claim*].

If you claim to have been on the last mentioned day a creditor to a larger amount than is stated above, you must, on or before the —— day of ——, 187—, send in the particulars of your claim, and the name and address of your solicitor (if any) to the undersigned, at [*State where*]. In default of your so doing, the above entry in the list of creditors will, in all the proceedings under the above application to reduce the capital of the company, be treated as correct.

Dated this —— day of ——, 187—.

A. B.,
Solicitor for the said company.

2298.
Notice by advertisement of the list of creditors (*n*).

In the matter of [*&c. : as in the petition* (*l*)].

Notice is hereby given, that a petition has been presented to Her Majesty's High Court of Justice for confirming a resolution of the above company, for reducing its capital from £—— to £——. A list of the persons admitted to have been creditors of the company on the —— day of ——, 187—, may be inspected at the offices of the company at [*State where*], or at the office of [*State where else*], at any time during usual business hours, on payment of the charge of one shilling.

Any person who claims to have been on the last mentioned day, and still to be, a creditor of the company, and who is not entered on the said list, and claims to be so entered, must on or before the —— day of ——, 187—, send in his name and address, and

(*k*) See Ord. 21 Mar. 1868, rule 9, and Sched. No. 4 ; Dan. Pr. 1982. The notice is to be sent through the post, in a pre-paid letter : addressed to the creditor at his last known address or place of abode : within seven days after the filing of the affidavit (see *ante* No. 2295), or such further time as the Judge may allow ; *Ibid.*

(*l*) See *ante* No. 2291, note (*m*).

(*m*) *Quære*, "from £—— to £—— ;" compare Ord. 21 Mar. 1868, rule 9, with *Ibid.*, rule 10, and Sched. Nos. 2, 5 ; *ante* No. 2294, and *post* No. 2298.

(*n*) See 30 & 31 Vict. c. 131, s. 13 ; Ord. 21 Mar. 1868, rule 10, and Sched. No. 5 ; Dan. Pr. 1979, 1982. The notice is to be published at such times, and in such newspapers, as the Judge directs, after the affidavit verifying the list has been filed ; Ord. 21 Mar. 1868, rule 10.

the particulars of his claim, and the name and address of his solicitor (if any), to the undersigned, at [*State where*]: or, in default thereof, he will be precluded from objecting to the proposed reduction of capital (*o*).

Dated this —— day of ——, 187—.

A. B.,
Solicitor for the said company.

2299. Affidavit of result of notices, and verifying list of creditors (*p*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of [*&c.: as in the petition* (*q*)].

We, C. D., of, *&c.* the Secretary of the said company (*r*), E. F., of, *&c.*, the Solicitor of the said company, and A. B., of, *&c.*, the Managing Director of the said company (*r*), severally make oath and say, as follows:

I, the said C. D., for myself, say as follows:

1. I did, on the —— day of ——, 187—, in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B. (*s*), upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors (*t*) marked A., referred to in the affidavit of ——, filed on the —— day of ——, 187— (*u*).

2. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively), and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office Receiving House, No. ——, in —— Street, in the county of ——, between the hours of ——, and —— of the clock in the ——noon of the said —— day of ——, 187— (*x*).

And I, the said E. F., for myself say as follows:

3. [*If notice issued under rule* 10 (*y*) *say*:] A true copy of the

(*o*) As to saving of rights of creditors who are ignorant of the proceedings, see 30 & 31 Vict. c. 131, s. 17; Dan. Pr. 1987.

(*p*) See Ord. 21 Mar. 1868, rule 11, and Sched. No. 6; Dan. Pr. 1983. The affidavit is to be filed: and an office copy thereof, and the lists exhibited thereto, are to be left at Chambers: within such time as the Judge shall direct; *Ibid.*

(*q*) See *ante* No. 2291, note (*m*).

(*r*) Or other competent officer or officers of the company; see Ord. 21 Mar. 1868, rule 11; Dan. Pr. 1983.

(*s*) See *ante* No. 2297. Exhibit the notice. For form of memorandum of exhibit, see *ante* No. 723.

(*t*) See *ante* No. 2296.

(*u*) See *ante* No. 2295.

(*x*) See *ante* No. 2297, note (*k*).

(*y*) See *ante* No. 2298, note (*n*).

notice now produced and shown to me, and marked C. (*z*), has appeared in the —— of the —— day of ——, 187— [*&c.: Describe the newspapers in, and the dates on, which the notice has appeared*].

4. I have, in the paper writing now produced and shown to me, and marked D. (*a*), set forth a list of all claims, the particulars of which have been sent in to me, pursuant to the said notice B. now produced and shown to me (*b*), by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked A., referred to in the said affidavit of ——, filed on the —— day of ——, 187— (*bb*).

5. [*If notice issued under rule* 10 (*c*), *add:*] I have, in the paper writing now produced and shown to me, marked E. (*d*), set forth a list of all claims, the particulars of which have been sent in to me, pursuant to the notice referred to in the third paragraph of this affidavit, by persons claiming to be creditors of the said company on the —— day of ——, 187—, not appearing on the said list of creditors, marked A., and who claim to be entered thereon.

And we (the said) C. D. and A. B., for ourselves, say as follows:

6. We have in the first part of the said paper writing marked D. (*a*) (now produced and shown to us), and also in the first part of the said paper writing marked E. (*d*) (also produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted.

7. We have, in the second part of each of the said paper writings respectively marked D. and E., set forth such of the said debts and claims as are wholly disputed by the said company.

8. In the said exhibits D. and E. are distinguished such of the debts, the full amounts whereof are proposed to be set apart and appropriated in such manner as the Judge shall direct.

Sworn [*&c.: see ante* No. 696 *or* 698].

(*z*) See *ante* No. 2298. Exhibit the notice. For form of memorandum of exhibit, see *ante* No. 723.

(*a*) See *post* No. 2300.

(*b*) See *ante* No. 2297.

(*bb*) See *ante* Nos. 2295, 2296.

(*c*) See *ante* No. 2298.

(*d*) See *post* No. 2301.

2300. List of debts and claims sent in pursuant to notice by post to creditors: being exhibit D. to No. 2299 (*e*).

D.

In the matter of [*&c.: as in the petition* (*ee*)].

List of debts and claims of which the particulars have been sent in to E. F. by persons claiming to be creditors of the said company for larger amounts than are stated in list of creditors made out by the company.

This paper writing, marked D., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit sworn before me this —— day of ——, 187—:

X. Y., *&c.*

FIRST PART.

Debts and claims wholly or partly admitted by the company.

Names, addresses, and descriptions of creditors (*f*).	Particulars of debt or claim.	Amount claimed.	Amount admitted by the company to be owing to creditor.	Debts proposed to be set apart and appropriated in full, although disputed.

SECOND PART.

Debts and claims wholly disputed by the company.

Names, addresses, and descriptions of claimants (*f*).	Particulars of claim.	Amount claimed.	Debts proposed to be set apart and appropriated in full, although disputed.

(*e*) See *ante* No. 2299, and notes thereto.

(*ee*) See *ante* No. 2291, note (*m*).

(*f*) The names are to be inserted alphabetically.

E.

2301.
List of debts and claims sent in pursuant to notice by advertisement: being exhibit E. to No. 2299 (*g*).

In the matter of [*&c.: as in the petition* (*i*)].

List of debts and claims of which the particulars have been sent in to Mr. E. F., by persons claiming to be creditors of the company, and to be entered on the list of the creditors made out by the company.

This paper writing marked E., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit, sworn before me, this —— day of ——, 187—:

X. Y., *&c.*

FIRST PART.

[*Same headings as in Exhibit D: ante* No. 2300.]

SECOND PART.

[*Same headings as in Exhibit D: ante* No. 2300.]

2302.
Notice to creditor to prove debt or claim (*h*).

In the matter of [*&c.: as in the petition* (*i*)].

To [*Name of creditor*].

You are hereby required to come in and prove the debt claimed by you against the above company (*k*), by filing your affidavit and giving notice thereof to Mr. A. B. (*l*), the solicitor of the company, on or before the —— day of —— next; and you are to attend by your solicitor at the Chambers of the Master of the Rolls [*Or*, of the Vice-Chancellor Sir ——] at [*State where*], in the county of Middlesex, on the —— day of ——, 187—(*m*), at —— o'clock in the —— noon: being the time appointed for hearing and adjudicating upon the claim: and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will be precluded from objecting to the proposed reduction of the capital of the company.

[*Or*,

(*g*) See *ante* No. 2299, and notes thereto.

(*h*) See Ord. 21 Mar. 1868, rule 12, and Sched. No. 7; Dan. Pr. 1983. The notice is to be given, if the Judge so directs; *Ibid.*, rule 12; and is to be sent in manner mentioned in rule 9; *Ibid.*; and see *ante* No. 2297, note (*k*). As to the costs of proof, or failure in proof, see Ord. 21 Mar. 1868, rule 13; Dan. Pr. 1984.

(*i*) See *ante* No. 2291, note (*m*).

(*k*) Where part of the debt or claim is admitted by the company, the notice should be qualified accordingly; see Ord. 21 Mar. 1868, rule 12.

(*l*) As the notice is to be given to the company's solicitor, it should appear by the notice where he is to be found.

(*m*) Not less than four clear days after the notice; see Ord. 21 Mar. 1868, rule 11; Dan. Pr. 1983.

[*Or*, you will, in all proceedings relative to the proposed reduction of the capital of the company, be treated as a creditor for such amount only as is set against your name in the list of creditors.]

Dated this —— day of ——, 187—.

A. B., of [*Place of business* (*n*)],
Solicitor for the said company.

2303. Chief Clerk's certificate of result of the settlement of the list of creditors (*o*).

[*Title: as in the petition* (*oo*)].

In pursuance of the direction given to me by the Master of the Rolls [*Or*, Vice-Chancellor——] I hereby certify that the result of the proceeding which has been taken in pursuance of the order made in this matter dated the —— day of ——, 187—(*p*), and the General Order of Court in that behalf, is as follows:

The petitioners, the said company, have attended by their solicitor.

A list of the persons who were creditors of the said company on the —— day of ——, 187—(*q*), has been settled and is set forth in the first schedule hereto.

The said company have since paid off and discharged such of the said debts or claims as are set forth in the (first) part of the said schedule.

The said company are willing to set apart and appropriate the full amount of the debts or claims set forth in the (second) part of the said schedule. Such debts or claims amount together to £——.

The amounts of the debts or claims set forth in the (second) part of the said schedule have been fixed by inquiry and adjudication in manner provided by the 14th section of the Companies Act, 1867 (*r*), and make together the sum of £——.

The said company do not admit, and are not willing to set apart and appropriate, the debts or claims set forth in the (third) part of the said schedule, or any of them, or any part thereof respectively; and the amounts thereof respectively have not been fixed by inquiry and adjudication as aforesaid.

Such of the creditors of the said company as have consented in writing to the proposed reduction of the capital thereof are named in the —— part of the said schedule; and the sum of £—— is the total amount of the debts due from the said company to the creditors so consenting.

The sum of £—— is the total amount of the debts or claims

(*n*) See note (*l*), *supra*.

(*o*) See Ord. 21 Mar. 1868, rule 14: as amended by Ord. 2 Mar. 1869; Dan. Pr. 1984. Form No. 2303 is intended merely as a general guide to what is ordinarily required to be certified. See further as to the Chief Clerk's certificate, Dan. Pr. 1215, *et seq.*; and *ante* No. 1238, *et seq.*, and notes thereto.

(*oo*) See *ante* No. 2291, note (*m*).

(*p*) See *ante* No. 2293.

(*q*) Date fixed by the order.

(*r*) See Dan. Pr. 1980.

of the said company, the payment of which has been secured in manner provided by the said 14th section of the Companies Act, 1867; and the names of the persons to whom the same are due, or by whom the same are claimed, are set forth in the —— column of the said schedule.

The debts or claims set forth in the second schedule hereto have been made against the said company, but have been wholly disallowed.

Pursuant to the said order of the —— day of ——, 187—(*s*), notice of the petition presented by the said company for confirming a resolution reducing their capital has been inserted in [*State what newspapers, and of what dates*]; and a list of the persons who were creditors of the said company on the —— day of ——, 187—: together with an office copy of the affidavit of A. B., filed the —— day of ——, 187—, verifying the same (*t*): was left at the chambers of the said Judge on the —— day of ——, 187—(*s*).

Notice of the said list of creditors has been inserted in the [*State what newspapers, and of what dates*].

The evidence produced on this proceeding consists of [*State what*].

Dated [*&c.: Conclude as in* No. 1238 *ante*].

The first schedule above referred to

[*Divide the schedule into parts, with appropriate headings: to correspond with the certificate.*]

The second schedule above referred to.

2304. Note of the Chief Clerk that his certificate has become binding (*u*).

[*Title.*]

The certificate made by me of the result of the settlement of the list of creditors in this matter, pursuant to the order therein dated the ——, 187—, has been filed and become binding.

Dated this —— day of ——, 187—.

C. D.,
Chief Clerk.

To the Secretary of the Lord Chancellor [*Or*, Master of the Rolls].

(*s*) See *ante* No. 2293.

(*t*) See *ante* Nos. 2295, 2296.

(*u*) See Ord. 21 Mar. 1868, rules 3, 15; Dan. Pr. 1981, 1984. The petition (*ante* No. 2291) will be placed in the Judge's list of petitions for hearing, upon a note to the above effect being produced at the office of the Secretary of the Lord Chancellor or Master of the Rolls (as the case may be), after the expiration of eight clear days from the filing of the certificate; see *Ibid.*

2305.
Notice by advertisement of the day appointed for hearing the petition (*x*).

In the matter of [*&c.: as in the petition* (*y*)].

Notice is hereby given that a petition presented to Her Majesty's High Court of Justice on the —— day of ——, 187—, for confirming a resolution reducing the capital of the above company from £—— to £——, is directed to be heard before the Vice-Chancellor —— [*Or*, the Master of the Rolls] on the —— day of ——, 187—.

A. & B., of [*Place of business*],
[Agents for C. & D., of, *&c.*]
Solicitors for the company.

2306.
Notice by creditor of intention to oppose application (*a*).

In the matter of [*&c.: as in the petition* (*y*)].

To Mr. A. B., the solicitor of the above named company.

You are requested to take notice that it is my intention [*Or*, the intention of my client Mr. E. F., of (*residence and addition*),] to appear at the hearing of the petition presented by the said company for confirming a resolution reducing their capital, and to oppose the application made thereby.

Dated this —— day of ——, 187—.

E. F., of [*residence and addition*],
a creditor of the said company.
[*Or*, G. H., of (*Place of business*),
solicitor for the said E. F., a
creditor of the said company.]

2307.
Order confirming resolution for reduction of capital, on hearing the petition (*b*).

[*Date and Title.*]

Upon the petition preferred on, *&c.*, unto, *&c.*, and upon hearing counsel for the petitioners, and upon reading the petition [*and Order directing inquiries—Chief Clerk's Certificate of result—and the newspapers containing the notices directed to be advertised*]: This Court doth approve the minute set forth in the first part of

(*x*) See Ord. 21 Mar, 1868, rule 16, and Sched. No. 8; Dan. Pr. 1984. The notices are to be published at such times, and in such newspapers, as the Judge directs; rule 16, *sup.* The direction will be given at Chambers, on an *ex parte* application by the company's solicitor, after the Chief Clerk's certificate (*ante* No. 2303) has become binding. In *Re Warrant Finance Company* (*ante* No. 2291), the notices of the hearing of the petition were directed to be advertised in the same papers as the notices of the presentation: as to which, see *ante* No. 2293 note (*s*).

(*y*) See *ante* No. 2291, note (*m*).

(*a*) See Ord. 21 Mar. 1868, rule 17; Dan. Pr. 1984. Two clear days notice of the opposition must be given; *Ibid.* As to the costs of, and occasioned by, the appearance, see Ord. 21 Mar. 1868, rule 18; Dan. Pr. 1985.

(*b*) *Re Warrant Finance Co.*, M. R., 30 July, 1870, Reg. Lib. B. 2488. For

he schedule hereto (*c*) ; And doth order that the resolution set orth in the second part of the said schedule : being the special esolution passed at an extraordinary general meeting of the etitioners held on, *&c.*, and duly confirmed at another general neeting held on, *&c.* : be confirmed. And it is ordered that notice of the registration by the Registrar of Joint Stock Companies of this order : including the said minute : be published n the London Gazette of the —— of ——, 18— ; in the Times f the —— and —— of ——, 18—, and in the Daily News of he —— and —— of ——, 18—(*d*). And it is ordered that the etitioners be at liberty (on and after the —— day of ——, 8—) to discontinue the addition to their name of the words and reduced" (*f*).

The Schedule.

First Part : Minute approved by the Court.

The nominal capital of the company is 240,000*l.*, divided into 0,000 shares of 12*l.* each (*g*).

Second Part : Special resolution (*g*).

2308. Notice by advertisement of the registration of order confirming reduction and minute (*h*).

In the matter of [*&c.* : *as in the order confirming the resolution*].

Notice is hereby given that by an order made by Her Majesty's High Court of Justice on the —— day of ——, 187—, in the above mentioned matter, it was ordered that the special resolution passed at [*&c.* : *Repeating the terms of the order*] be confirmed. And it was ordered that the said company be at liberty (after the

he petition in that case, see *ante* No. 2291 ; and see 30 & 31 Vict. c. 131, s. 9, 15 ; Dan. Pr. 1978, 1986. See also the order in *Re Crédit Foncier of England*, V.-C. B., 21 Jan. 1871 ; L. R. 11 Eq. 356, 362. As to the jurisdiction of the Court at the hearing of the petition, see Ord. 21 Mar. 1868, ule 19 ; Dan. Pr. 1985.

(*c*) See 30 & 31 Vict. c. 131, ss. 15, 16 ; Dan. Pr. 1986.

(*d*) See 30 & 31 Vict. c. 131, s. 15 ; Ord. 21 Mar. 1868, rule 20 ; Dan. Pr. 986. The practice is to direct the final advertisements to be inserted in the ame newspapers as the preliminary notices were advertised in ; see *Re Crédit Foncier of England*, L. R. 11 Eq. 360, V.-C. B. : in which case the final dvertisements were ordered to be inserted once in the London Gazette, and nce in each of the same three London newspapers [see *ante* No. 2293, ote (*s*)], in (each of) the two weeks next following the registration ; S. C., L. R. 1 Eq. 361, 362.

(*f*) See 30 & 31 Vict. c. 131, s. 10 ; Ord. 21 Mar. 1868, rule 20 ; Dan. Pr. 978, 1986 ; as to the power of the Court to dispense altogether with such ddition, see 40 & 41 Vict. c. 26, s. 4 (2) ; note (*l*) to No. 2291 *ante*.

(*g*) See *ante* No. 2291, par. 9, and note (*n*) thereto.

(*h*) See 30 & 31 Vict. c. 131, s. 15 ; Ord. 21 Mar. 1868, rule 20 ; Dan. Pr. 986 ; and *ante* No. 2307.

expiration of —— from the date of the said order) to discontinue the addition to its name of the words "and reduced" [*or as may be: as in the order*].

And notice is hereby also given that the said order has been produced to the Registrar of Joint Stock Companies, and a copy thereof has been delivered to him: together with a minute approved by the said Judge, in the words and figures following; namely: [*State what*]; and such order and minute have been duly registered by the said Registrar of Joint Stock Companies.

Dated this —— day of ——, 187—.

A. & B., of [*Place of business*],
Solicitors for the said company.

Section XXVI.—The Married Women's Property Act 1870 (*a*).

2309.

Summons by a married woman for the transfer of a fund into her name (*b*).

[*Same as* No. 2038 *ante*].

2310.

Notice of motion or summons for the decision of a question as to property (*c*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge*].

In the matter of A. B., the wife of C. B.
And in the matter of The Married Women's Property Act 1870.

[*If the application is by motion, say:*] Take notice [*&c., proceed as in* No. 1571 *ante, down to* on the part of] C. B., of [*address and description*]:

[*If the application is by summons, say:*] Let all parties [*&c.; proceed as in* No. 865 *ante, down to* on the part of] C. B., of [*address and description*]:

[*Or, if the application is by the wife, say:*] on the part of the above named A. B., the wife of C. B., of [*address and description*], by D. E., of [*address and description*], her next friend:

[*In any case, continue thus:*] that [*Describe the question to be determined; as thus:*] it may be declared that the property bequeathed to the said A. B. by the will of G. H., late of, *&c.*,

(*a*) 33 & 34 Vict. c. 93.
(*b*) See 33 & 34 Vict. c. 93, s. 3; and note (*u*) to No. 2038 *ante*.
(*c*) See 33 & 34 Vict. c. 93, s. 9; Dan. Pr. 1991.

and dated, *&c.*, does not belong [*Or*, belongs] to the said A. B. for her separate use, within the meaning of the above mentioned Act. And that all proper consequential directions may be given.

Dated [*&c.; conclude as in* No. 865 *ante*].

2311. Summons to appoint a trustee to receive policy moneys (*d*).

Title as in No. 2310 *ante; other formal parts, see* No. 865 *ante.*

On the part of A. B., of [*address*], widow, that, pursuant to the 10th section of The Married Women's Property Act 1870, D. E., of [*address and description*], may be appointed trustee to receive and give a good discharge for the moneys secured by and payable under the policy Nod. ——, granted by the —— Life Assurance Society upon the life of C. B., and expressed to be for the benefit of [*State whom; as in policy*].

SECTION XXVII.—CUSTODY OF INFANTS ACT, 1873 (*a*).

2312. Petition for access and custody (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of A. B., C. B., and D. B., infants.
And in the matter of the Act 36th Victoria, chapter 12, intituled "An Act to amend the law as to the custody of infants."

To Her Majesty's High Court of Justice.

The humble petition of E. B. wife of F. B., of [*address and description*], by X. Y., of, *&c.*, her next friend.

Showeth as follows:

1. [*State the marriage of the infant's parents, and the issue thereof.*]

2. [*State in whose custody the children now are, and the grounds for seeking the interference of the Court.*]

Your petitioner therefore humbly prays as follows:

1. That the said F. B. may be ordered to permit your petitioner to have access to the said infant A. B., at such times and subject to such regulations as to this honourable Court shall seem proper.

2. That the said F. B. may be ordered to deliver the said infant C. B. into the hands of your petitioner, and that the said C. B. may be ordered to remain in or under the custody or control of your

(*d*) See 33 & 34 Vict. c. 93, s. 10; Dan. Pr. 1992.
(*a*) 36 Vict. c. 12; Morg. 308—310; *Re Taylor*, 4 Ch. D. 157.
(*b*) 36 Vict. c. 12, s. 1.

petitioner until the said C. B. shall attain the age of sixteen years: subject to such regulations as to this honourable Court shall seem proper.

3. That the said infant D. B. may be ordered to remain in or under the custody or control of your petitioner until the said D. B. shall attain the age of sixteen years: subject to such regulations as to this honourable Court shall seem proper.

4. That the said F. B. may be ordered to pay the costs of and incident to this application.

Or that [*Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

SECTION XXVIII.—THE COUNTY DEBENTURES ACT, 1873 (*c*).

2313. Petition to appoint a receiver (*d*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of the —— county authority (*e*).
And in the matter of The County Debentures Act, 1873.

To Her Majesty's High Court of Justice.

The humble petition of A. B., of [*address and description* (*f*).]

1. By an instrument in writing, dated the —— day of ——, 187—, signed in open Court of Sessions by the acting chairman for the time being of the general [*Or,* quarter; *Or,* gaol] sessions of the county of ——, and countersigned by the county officer of the said county, the county authority of —— charged the county rate of ——, with payment to [*&c.: Recite the debenture*].

2. [*Show that default has been made in payment to the petitioner or petitioners at the time appointed for payment thereof, of a sum or sums due on debentures or coupons amounting in the aggregate to not less than* £500].

Your petitioner therefore humbly prays, that some fit and proper person may be appointed on behalf of your petitioner to raise from time to time by levy of the said county rate of —— [*Name the rate on which the sum in default is charged*], the sum of £—— [*Sum in default*], and also the costs of this

(*c*) 36 & 37 Vict. c. 35.

(*d*) 36 & 37 Vict. c. 35, s. 17. As to the mode of serving the petition, see *Ibid.*, s. 19. As to the powers of the receiver when appointed, see *Ibid.*, s. 17.

(*e*) See 36 & 37 Vict. c. 35, s. 18.

(*f*) As to who may be petitioners, see 36 & 37 Vict. c. 35, s. 17.

application, and all costs, charges, and expenses incurred in and about the appointment of such receiver, and in and about the levy of the said rate, including the proper remuneration of such receiver for his trouble.

Or that [*Continue as in* No. 1578 *ante; and add foot note*, No. 1579].

SECTION XXIX.—THE CONSOLIDATED FUND (PERMANENT CHARGES REDEMPTION) ACT, 1873 (*j*).

2314. Summons to confirm contract for sale of an annuity (*k*).

In the matter of an annuity granted to [*State whom*].
And in the matter of the Consolidated Fund (Permanent Charges Redemption) Act, 1873.

Let all parties [*&c.: Proceed as in* No. 865 *ante, down to* application] on the part of A. B., of [*address and description*]:

1. That the contract dated the —— day of ——, 187—, made between [*State whom*], for the redemption of the annuity [*Describe it, as in agreement*] may be confirmed.

2. That the Lords Commissioners of Her Majesty's Treasury may be at liberty on or before the —— day of ——, 187—, to pay the sum of £—— [*Purchase-money*] into Court, to the credit of "*Ex parte* A. B. In the matter of the Consolidated Fund (Permanent Charges Redemption) Act, 1873."

3. That it may be referred to the Taxing Master to tax the applicant and [*Name any other persons entitled to their costs*] their costs of this application; and that such costs when taxed may be paid out of the said sum of £—— when so paid into Court as aforesaid.

4. That the residue of the said sum of £—— may be invested in Consolidated £3 per cent. annuities [*or as may be*], and that the dividends as they accrue thereon during the life of the applicant A. B. may be paid to the applicant A. B. until further order.

Dated [*&c.; Conclude as in* No. 865 *ante, including the foot note*].

(*j*) 36 & 37 Vict. c. 57.

(*k*) 36 & 37 Vict. c. 57, ss. 2, 5. An application under this act may be made by originating summons; *Ibid.*, s. 5. For the practice as to originating summonses, see *ante* No. 865—880, and notes thereto. As to the application of the purchase money, see 36 & 37 Vict. c. 57, s. 3.

Section XXX.—The Vendor and Purchaser Act, 1874 (*a*).

2315. Summons for the decision of the Judge as to requisitions, &c. (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of a contract for the sale of real [*Or*, leasehold] estate made between A. B. and C. D.
And in the matter of The Vendor and Purchaser Act, 1874.

Let all parties [*&c.: Proceed as in* No. 865 *ante, down to* on the part of] A. B. [*Or*, C. D.] of [*address and description*], that it may be declared that [*State what; as thus:*]
the requisitions and objections of the said C. D. in respect of the title to the hereditaments comprised in the above-mentioned contract of sale have [*Or*, have not] been sufficiently answered by the vendor; *Or*,
the said C. D. is [*Or*, is not] precluded by the 3rd of the conditions of sale from making or raising his objection or requisition numbered 1; *Or*,
the said C. D. is [*Or*, is not] entitled to compensation in respect of [*State what*]
And that a good title to the said hereditaments has [*Or*, has not] been shown in accordance with the particulars and conditions of sale. And that the said —— may be ordered to pay the costs of this application.

2316. Summons for decision of the Judge as to the proper party to convey (*b*).

[*Proceed as in* No. 2315 *ante, down to* declared; *and continue thus:*] that the said A. B. is [*Or*, is not] entitled to convey the hereditaments comprised in the above-mentioned contract of sale for an estate of fee-simple [*or as may be*]. And that the concurrence in such conveyance of the legal personal representative of —— is not [*Or*, is] necessary. And that the said —— may be ordered to pay the costs of this application.

(*a*) 37 & 38 Vict. c. 78, s. 9; see *Re Burroughs, Lynn, and Sexton's Contract*, 5 Ch. D. 601.

(*b*) See note (*a*) *supra*. The application is made by originating summons, for the practice as to which, see *ante* Nos. 865—880, and notes thereto; for form of statement of the points in dispute for Chambers, see *ante* No. 1004.

SECTION XXXI.—THE TRADE MARKS REGISTRATION ACTS, 1875 TO 1877 (*a*).

2317.
Notice of motion for rectification of register (*b*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
In the matter of A. B.
And in the matter of the Trade Marks Registration Acts, 1875 to 1877.

Take notice [*Proceed as in* No. 1571 *ante, down to* on the part of] the above-named A. B., of [*address and description*], that the register of trade marks, established and kept under the authority of the above-mentioned Acts, may be rectified by [*State how; as thus:*] entering thereon the name of the said A. B. as the proprietor of [*Here describe the trade mark in question*].

Dated [*&c.; Conclude as in* No. 1571 *ante*].

2318.
Summons for the like (*c*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title; as in* No. 2317 *ante.*]

Let all parties [*&c.: Proceed as in* No. 865 *ante, down to* on the part of] the above-named A. B., of [*address and description*], that [*Proceed as in* No. 2317 *ante, down to* Dated; *and conclude as in* No. 865 *ante*].

(*a*) See 38 & 39 Vict. c. 91; 39 & 40 Vict. c. 33; 40 & 41 Vict. c. 37; Rules under the Trade Marks Registration Act, 1875, W. N. (1876) Pt. II. pp. 14, *seq.*

(*b*) See 38 & 39 Vict. c. 91, s. 5. An application under this section is to be made to the Chancery Division by motion or by summons at Chambers; Rules 42, 43. In *Ex parte Stephens*, 24 W. R. 819, the M. R. directed a two days' notice of motion to be served upon the Registrar of Trade Marks. The application should be supported by an affidavit of the facts of the case; *Ex parte Stephens*, 24 W. R. 819.

(*c*) See note (*b*) to No. 2317 *ante.* The summons is an originating one, for the practice as to which, see *ante* Nos. 865 to 880, and notes thereto.

2319. Special case for the opinion of the Court (*d*).

187—. B. No. .

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between A. B. . . . Plaintiff,
and
C. D. . . . Defendant.

Special case stated for the opinion of the High Court of Justice, pursuant to the Trade Marks Registration Act, 1875, and the rules made thereunder.

1. } [*State concisely, in numbered paragraphs, such facts as are*
2. } *necessary to enable the Court to determine the rights of the*
3. } *parties.*]

The question submitted for the opinion of the Court is:

1. Whether the plaintiff A. B., or the defendant C. D., or either of them, is entitled to have his name entered upon the register of trade marks, established and kept under the authority of the above-mentioned Act, as the proprietor of the said trade mark.

NOTE.—This [*Conclude as in* No. 796 *ante*].

2320. Notice of motion or summons for leave for registrar to register a trade mark identical with one already registered (*e*).

[*Proceed as in* No. 2317 *or* No. 2318 *ante, to* A. B.; *and continue thus:*] of [*address and description*], that the Registrar of Trade Marks may be at liberty to enter the name of the said A. B. on the register of trade marks, established and kept under the authority of the above-mentioned Acts, as the proprietor of [*Describe the trade mark in respect of which the application is made*], notwithstanding that C. D. is already entered upon the said register as the proprietor of an identical trade mark.

(*d*) See 38 & 39 Vict. c. 91, s. 5; Rules 42, 44, 45. The special case must be filed and proceeded with in like manner as any other special case; Rule 44. For the practice with reference to special cases, see *ante* Nos. 796—810, and notes thereto.

(*e*) See 38 & 39 Vict. c. 91, s. 6; Rules 42, 43.

SECTION XXXII.—THE SETTLED ESTATES ACT, 1877 (*a*).

2321. Petition for order vesting general powers of leasing in trustees (*b*).

In the High Court of Justice,
Chancery Division (*c*).
[*Name of Judge*].

In the matter of the Settled Estates Act, 1877.
And in the matter of certain pieces of land, containing in the whole — a. — r. — p., or thereabouts, situate in the township of C., in the parish of R., in the county of C.; and of two several pieces of land called "Lord's Heath," adjoining R. heath, containing together — a. — r. — p., or thereabouts, in the township and parish of R. aforesaid: forming part of the R. estate, settled by the will of G. J. C., deceased.

To Her Majesty's High Court of Justice,
The humble petition of F. R. C. of [*address and description*](*d*).

Showeth as follows:

1. [*State the instrument or instruments whereby the hereditaments mentioned in the title stand limited to or in trust for several persons by way of succession* (*e*).]

2. [*Show in whom any beneficial estate or interest under or by virtue of the settlement is vested at the time of the application.*]

3. [*State such facts as may be necessary to enable the Court to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorised* (*f*); *as thus:*] It is the custom of the country where the

(*a*) 40 & 41 Vict. c. 18. As to the settlements to which this Act extends, see *Ibid.*, s. 57. The Act came into operation on the 1st Nov. 1877; *Ibid.*, s. 61; but no general orders for regulating the procedure thereunder (see s. 42) have yet been published.

(*b*) As to the powers of the Court to authorise leases of settled estates, see 40 & 41 Vict. c. 18, ss. 4, 6, 7, 8, 9, 38, 39, 40, 55, 56. As to the conditions upon which such leases are to be granted, see 40 & 41 Vict. c. 18, ss. 4, 5. The power to authorise leases may be exercised by vesting powers of leasing in trustees; 40 & 41 Vict. c. 18, ss. 10, 13, 14; as to the operation of the exercise of such power by the trustees, see *Ibid.* s. 13. As to the evidence to be adduced in support of an application to vest powers of leasing in trustees, see 40 & 41 Vict. c. 18, s. 11. As to putting a notice of the exercise of the powers on the settlement or otherwise, see 40 & 41 Vict. c. 18, s. 33. As to the application of money set aside out of rents, see 40 & 41 Vict. c. 18, ss. 34, 35, 36. As to the powers of a tenant for life, or for years determinable with life, or for a greater estate, to grant leases, see 40 & 41 Vict. c. 18, ss. 46—48.

(*c*) The matter must be assigned to the Chancery Division; 40 & 41 Vict. c. 18, s. 3.

(*d*) As to the person who may petition the Court to exercise its powers, see 40 & 41 Vict. c. 18, ss. 23, 54. As to the persons whose consent to the application is required, and as to dispensing with such consent, see 40 & 41 Vict. c. 18, ss. 24—29.

(*e*) See 40 & 41 Vict. c. 18, s. 2.

(*f*) See 40 & 41 Vict. c. 18, s. 11.

said hereditaments are situate for landowners to grant leases for long terms of years of pieces of ground as sites for the erection of alkali works, salt works, and other works of a similar description; and persons intending, as lessees, to expend money in the erection of buildings suitable for such works usually require leases for terms of not less than 999 years. The hereditaments above mentioned to be situate in the township of C., in the parish of R., are very advantageously situated for such purposes. The pieces or parcels of land called "Lord's Heath," described in the title or heading of this petition, offer eligible sites for the erection of villa residences; and are well adapted for building purposes. Persons intending, as lessees, to expend money are not satisfied with leases for terms of 99 years only; but, for such purposes, usually require leases for terms of not less than 999 years. Applications have been from time to time made to the agent of your petitioner for grants of leases of portions of the said hereditaments for such purposes; but, by reason of the will of the said G. J. C. not containing any power enabling the granting of building leases, or of any lease beyond the term of twenty-one years, such applications could not be complied with.

4. It will be for the benefit of your petitioner, and of all other persons interested in the said settled estates, and consistent with a due regard for their interests therein, and your petitioner is desirous, that general powers of granting building leases for terms not exceeding 999 years, and of entering into and making preliminary contracts to grant any such leases, of all and singular the hereditaments mentioned in the title or heading of this petition, with the view to the erection thereon by lessees of buildings suitable for alkali works, salt works, and other works of a similar character, and also general powers of granting building leases for terms not exceeding 999 years, and of entering into and making preliminary contracts to grant any such leases: with proper provisions and conditions as to making roads, paths, and other open spaces, and laying down sewers, drains, and watercourses, and otherwise, as should from time to time be considered necessary or proper for the said pieces or parcels of ground called "Lord's Heath," or of any parts or part thereof: should be vested in the said H. A. and J. T., the present trustees of the said will, and in the trustees for the time being thereof.

5. Your petitioner is advised that, under the circumstances hereinbefore mentioned, such powers cannot be obtained without the assistance of this Court.

6. No application has been made to either House of Parliament for the purpose of effecting the object of this petition, or any similar object (*g*).

7. Your petitioner may be served with any order of this Court, or of the Judge in Chambers, or any notice relating to the sub-

(*g*) See 40 & 41 Vict. c. 18, s. 32, and *post* No. 2325.

ject of this petition, at the office of your petitioner's solicitors, Messrs. W., Y. & W., situate at, *&c.*

Your petitioner therefore humbly prays, as follows :

1. That for the purposes hereinbefore mentioned, an order may be made vesting in the said H. A. and J. T., as the trustees of the said will, and in the trustees or trustee thereof for the time being, or in such other persons as to this honourable Court shall seem meet, general powers of granting building leases for terms of years not exceeding 999 years in possession, and of entering into and making preliminary contracts to grant such leases, of all or any parts or part of the several pieces or parcels of ground and hereditaments, situate in the townships of C. and R., mentioned in the title or heading of this petition : such leases and contracts for leases to be in conformity with the provisions of the said Act of Parliament, so far as such provisions may be applicable to each particular case, and subject to such conditions as to this honourable Court may seem meet.

2. That such provisions may be made, or directions given : either by way of appointment of new trustees of the said will, or otherwise : for the purpose of the exercise from time to time of such powers of leasing, and of entering into or making preliminary contracts as aforesaid, as to this honourable Court shall seem meet.

3. That the costs of your petitioner, and of all other persons served with, or properly appearing as respondents to this petition, of this application, and incident thereto, may be taxed by the Taxing Master ; and that the amount of such costs, when taxed, may be a charge upon all or a sufficient part of the said pieces or parcels of ground and hereditaments hereinbefore described (*h*).

Or that [*&c. : Conclude as in* No. 1578 *ante ; and add foot note*, No. 1579].

(*h*) As to the costs of the application, see 40 & 41 Vict. c. 18, s. 41.

2322. Petition for order authorising particular lease (*j*).

[*Proceed as in* No. 2321 *ante, down to* as follows:]

1. [*Same as paragraph* 1 *of* No. 2321 *ante.*]

2. [*Same as paragraph* 2 *of* No. 2321 *ante.*]

3. By an agreement dated the —— day of ——, 187—, and made between [*State the parties*], it was agreed, subject to the sanction thereto of this honourable Court being obtained, that [*Set out the agreement for a lease*].

4. [*State facts showing the nature, value, and circumstances of the estate, and enabling the Court to ascertain the terms and conditions on which a lease thereof ought to be authorised; see paragraph* 3 *of* No. 2321 *ante* (*k*).]

5. It will be for the benefit of your petitioner, and of all other persons interested in the said settled estates, and consistent with a due regard for their interests therein, and your petitioner is desirous, that the said agreement should be carried into effect, but under the circumstances hereinbefore mentioned such agreement cannot be carried into effect without the assistance of this honourable Court.

6. [*Same as paragraph* 6 *of* No. 2321 *ante.*]

7. [*Same as paragraph* 7 *of* No. 2321 *ante.*]

Your petitioner therefore humbly prays:

1. That the said conditional agreement, dated the —— day of ——, 187—, may be directed to be carried into effect.

2. That all proper provisions may be made, and directions given for effecting the purposes hereinbefore mentioned.

3. That the costs [*&c.; as in paragraph* 3 *of the prayer of* No. 2321 *ante* (*l*)].

Or that [*Conclude as in* No. 1578 *ante, and add foot note,* No. 1579 *ante*].

(*j*) As to the powers of the Court to authorise leases of settled estates, see 40 & 41 Vict. c. 18, ss. 4, 6, 7, 8, 9, 38, 39, 40, 55, 56. As to the conditions upon which such leases are to be granted, see 40 & 41 Vict. c. 18, ss. 4, 5. The power to authorise leases may be exercised by approving of particular leases; 40 & 41 Vict. c. 18, ss. 10, 12; as to directing what person or persons shall execute the lease as lessor, and as to the effect of the lease when executed by such person or persons, see 40 & 41 Vict. c. 18, s. 12. As to the evidence to be adduced in support of the application, see 40 & 41 Vict. c. 18, s. 11. As to placing a notice of the exercise of its powers by the Court on the settlement or otherwise, see 40 & 41 Vict. c. 18, s. 33. As to the application of money set aside out of the rents, see 40 & 41 Vict. c. 18, ss. 34, 35, 36. As to the power of a tenant for life, or for years determinable with life, or for a greater estate to grant leases, see 40 & 41 Vict. c. 18, ss. 46—48.

(*k*) See 40 & 41 Vict. c. 18, s. 11.

(*l*) See 40 & 41 Vict. c. 18, s. 41.

2323.
Petition for sale (*m*).

In the High Court of Justice,
Chancery Division (*n*).
[*Name of Judge.*]

In the matter of the Settled Estates Act, 1877.
And in the matter of a messuage and several closes of land, containing — a. — r. — p., or thereabouts, in the township of L., and — a. — r. — p., or thereabouts, in H., in the parish of K., in the county of W., called Green Land End, and a peat moss, called Hall Moss, situate within, and holden of, the manor of B., in the said county, respectively devised by the will of W. C., esquire, deceased.

To Her Majesty's High Court of Justice.

The humble petition of J. E. G., of [*address and description*] (*o*).

Showeth as follows :

1. [*Same as paragraph* 1 *of* No. 2321 *ante.*]
2. [*Same as paragraph* 2 *of* No. 2321 *ante.*]
3. [*State circumstances showing that a sale is proper and consistent with a due regard for the interests of all parties entitled under the settlement; as thus :*] The value of lands in the vicinity of the said hereditaments so devised as aforesaid has of late years considerably increased, and your petitioner believes that the said hereditaments could now be most advantageously sold. Such a sale would be beneficial to all parties interested under the said will.
4. [*Same as paragraph* 6 *of* No. 2321 *ante.*]
5. [*Same as paragraph* 7 *of* No. 2321 *ante.*]

Your petitioner therefore humbly prays, that the said estate called Green Land End, and the said peat moss, may be sold under the direction of this honourable Court; and that all proper inquiries may be made, and directions given, for effecting such purpose; and that the costs of, and incident to, this petition may be provided for (*p*).

Or that [*&c.: Conclude as in* No. 1578 *ante; and add foot note,* No. 1579].

(*m*) As to the power of the Court to authorise sales of settled estates, or any parts thereof, see 40 & 41 Vict. c. 18, ss. 16, 18, 19, 38, 39, 40. As to placing on the settlement a notice of the exercise of the power, see 40 & 41 Vict. c. 18, s. 33. As to the application of the purchase money, see 40 & 41 Vict. c. 18, ss. 34—37.

(*n*) See note (*c*) to No. 2321 *ante.*

(*o*) See note (*d*) to No. 2321 *ante.*

(*p*) See 40 & 41 Vict. c. 18, s. 41.

2324.

Petition for leave to take a protective proceeding (*q*).

[*Proceed as in* No. 2321 *or* No. 2323 *ante, down to* as follows :]

1, 2. [*Same as paragraphs* 1, 2 *of* No. 2321 *ante.*]

3. [*State the circumstances which render the proposed proceeding necessary for the protection of the settled estate ; as thus :*] A bill has recently been introduced into the House of Commons for the construction of a railway from —— to ——. The proposed line of railway is projected to pass through the land subject to the trusts of the said settlement, and would, if constructed, cause a considerable deterioration in value thereof.

4. It is highly desirable, in the interests of all parties entitled under the said settlement, that the sanction of this honourable Court should be given to your petitioner to oppose the passing of the said bill, and that provision should be made for the costs of such opposition.

5, 6. [*Same as paragraphs* 6, 7 *of* No. 2321 *ante.*]

Your petitioner therefore humbly prays, that the sanction of this honourable Court may be given to proceedings for the purpose of opposing the passing of the said bill. And that the costs and expenses of and in relation to the said proceedings may be raised and paid by means of a sale of a competent portion of the land subject to the trusts of the said settlement [*Or*, by means of a mortgage of the land subject to the trusts of the said settlement ; *or as may be* (*q*)].

Or that [*Conclude as in* No. 1578 *ante ; and add foot note*, No. 1579 *ante*].

2325.

Affidavit that no previous application made to Parliament (*s*).

Title as in petition : see ante No. 2321 *or* 2323 ; *other formal parts : see ante* No. 693.

1. I have perused the petition preferred in this matter by [*Names of petitioners*] to Her Majesty's High Court of Justice on the —— day of ——, 187—, under the provisions of the above mentioned Act.

2. Neither the said petitioners, nor any or either of them, nor any other person entitled to, or interested in, the hereditaments mentioned in the title or heading of the said petition, have or has heretofore applied to either House of Parliament for a private Act to effect the same or a similar object to that for which the sanction of this honourable Court is prayed by the said petition [*or as may be*].

3. [*Show means of knowledge.*]

(*q*) See 40 & 41 Vict. c. 18, s. 17.
(*s*) See 40 & 41 Vict. c. 18, s. 32.

2326. Summons for the appointment of a guardian of an infant, to make, or to consent to, an application: where the summons is issued before the petition is presented (*t*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of A. B., an infant, by C. D., his next friend.

And in the matter of [*Set out the title of the intended petition; see ante* Nos. 2321, 2323].

Let [*&c.: Continue as in* No. 865 *ante, to* noon], on the hearing of an application on the part of the above-named infant A. B., by the above-named C. D., of [*residence and addition*], his next friend (*u*), that the said C. D., or some other proper person, may be appointed the special guardian of the said A. B., for the purpose of making an application on behalf of the said infant

[*Or, if the infant is not to be a petitioner, say:*] for the purpose of consenting on behalf of the said infant to an application by [*Name the intended petitioners*]

to this Court, under the provisions of the above mentioned Act.

[*If the infant is tenant in tail, add (v):*] And that such guardian may be at liberty to make [*Or,* consent to] such application accordingly.

Dated [*&c.: Conclude as in* No. 865 *ante: omitting the foot note*].

2327. The like: where the summons is issued after the petition is presented (*w*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of [*Set out the title of the petition presented*].

And in the matter of A. B., an infant, by C. D., his next friend.

Let [*&c.: Continue as in* No. 881 *ante, to* noon], on the hearing of an application on the part of the above-named infant A. B., by the above-named C. D., of [*residence and addition*], his next friend, that the said C. D., or some other proper person, may be appointed the special guardian of the said A. B., for the purpose of making, on behalf of the said infant, the application

[*Or, if the infant is not a petitioner, say:*] for the purpose of consenting, on behalf of the said infant, to the application

proposed to be made to this Court by the petition presented by [*Name the petitioners*], on the —— day of ——, 187—, under the provisions of the above mentioned Act.

[*If the infant is tenant in tail, add (v):* And that such guar-

(*t*) See 40 & 41 Vict. c. 18, s. 49.

(*u*) The written authority of the next friend to use his name, must be filed with the duplicate summons. For form of authority, see *ante* Nos. 46, 47.

(*v*) By adopting this course, the expense and delay of a subsequent application for leave will be saved; see 40 & 41 Vict. c. 18, s. 49.

(*w*) See notes to No. 2326 *ante*.

dian may be at liberty to make [*Or*, consent to] such application accordingly.

Dated [*&c.: Conclude as in* No. 881 *ante*].

2328.

Affidavit in support of application for the appointment of a guardian to make, or to consent to, an application on behalf of an infant (*g*).

Title: see ante No. 2326 *or* No. 2327; *other formal parts: see ante* No. 693.

1. [*State the infant's age; as thus:*] The above-named infant A. B. is of the age of —— years.

2. [*State whether the infant has any parent, testamentary guardian, or guardian appointed by the Court of Chancery; as thus:*] The said A. B. has neither a parent, nor a testamentary guardian, nor a guardian appointed by this honourable Court.

3. [*State where, and under whose care, the infant is residing; and at whose expense he is maintained; as thus:*] The said A. B. is now residing with, and under the care of, his maternal uncle C. D., at [*State where*]; and is maintained at the expense of the said C. D.

4. [*State in what way the proposed guardian is connected with the infant; and why proposed; and how qualified to be appointed; as thus:*] The said C. D., the person proposed to be appointed the special guardian of the said A. B., for the purpose of [*State what: as in the summons*], is the nearest relation of the said A. B.; and is proposed as such guardian because the said A. B. is under his care and protection, and is maintained at his expense. The said C. D. is also a person of good business habits, and fully competent to judge of the propriety of making [*Or*, consenting to] the said application, on behalf of the said A. B.

5. [*State whether the proposed guardian has any interest in the intended application; and, if he has, the nature of such interest, and whether it is or not adverse to the interest of the infant; as thus:*] The said C. D. has no interest whatever in the subject matter of the application proposed to be made by the said petition.

6. [*Show the consent of the proposed guardian to act; as thus:*] I saw the said C. D. sign the paper writing now produced and shown to me, and marked A. (*h*), and purporting to be his consent to act as such guardian as aforesaid. The name or signature "——," set and subscribed to the said paper writing, is of the proper handwriting of the said C. D.

Or, I am well acquainted with the handwriting of the said C. D.: having seen him write. The name or signature "——," set and subscribed to the paper writing now pro-

(*g*) See Regul. 8 Aug. 1857, r. 21; Dan. Pr. 1852.

(*h*) Exhibit it. For form of memorandum of exhibit, see *ante* No. 723.

duced, *&c.*, and purporting to be, *&c.* [*as above*], is of the proper handwriting of the said C. D.

7. [*State the nature of the intended application to the Court; as thus:*] The object of the application proposed to be made by the said petition is [*State, succinctly, what; as thus:*] to obtain an order for the sale, under the direction of this honourable Court, of the hereditaments described in the title or heading of the said petition.

8. [*Show means of knowledge.*]

2329. Consent to act of the proposed guardian of an infant (*k*).

In the High Court of Justice,
Chancery Division.

[*Title.*]

I, C. D., of [*residence and addition*], consent to be appointed special guardian of the above-named infant A. B., for the purpose of [*State what: as in the summons*].

Dated this —— day of ——, 187—.

C. D.

2330. Summons for leave for the guardian, or committee, of a tenant in tail to make, or to consent to, an application (*l*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

In the matter of A. B., an infant [*Or*, a person of unsound mind not so found].

And in the matter of [*Set out the title of the petition*].

Let [*&c.: Continue as in* No. 881 *ante, to* noon], on the hearing of an application on the part of C. D., of [*residence and addition*], the testamentary guardian [*or as may be*] of the above-named infant A. B.,

Or, the committee of the estate of the above-named A. B., that the said C. D. may be at liberty, on behalf of the said A. B., to make the application

[*Or, if the infant, or lunatic, is not a petitioner, say:*] may be at liberty, on behalf of the said A. B., to consent to the application

proposed to be made by the petition of [*Names of the petitioners*], presented on the —— day of ——, 187—, under the provisions of the above-mentioned Act. Dated [*&c.: Conclude as in* No. 881 *ante*].

(*k*) For form of affidavit verifying the signature, see *ante* No. 2328, par. 6. Where the intended guardian makes an affidavit in support of the application, he should state therein his consent to act: so as to save the expense of a separate consent, and affidavit verifying it.

(*l*) See 40 & 41 Vict. c. 18, s. 49. As to the evidence in support of the application, see *post* No. 2331, and note (*n*) thereto.

2331.
Affidavit of guardian, or committee, in support (*n*).

Title: as in No. 2330 *ante; other formal parts: see* No. 693 *ante.*

1. I am the testamentary guardian [*or as may be*] of the above-named A. B.

Or, 1. I am the committee of the estate of the above-named A. B.

2. I am aware of the nature and object of the application proposed to be made to this honourable Court by the petition of [*Names of petitioners*], presented in this matter on the —— day of ——, 187—, under the provisions of the above-mentioned Act.

3. I have fully considered, on behalf of the said A. B., the object of the said application; and I believe it to be proper, and for the benefit of the said A. B., that the said application should be made [*Or*, should be consented to] on his behalf.

4. [*State means of knowledge.*]

2332.
Minute of examination of a married woman, by the Judge at chambers, as to her consent (*o*).

Master of the Rolls [*Or*, Vice-Chancellor ——] at Chambers. } ——, 187—.

The petitioner A. B., the wife of C. B.,

Or, The within-named A. B., the wife of C. B.,

was this day examined by the Judge in person, apart from the said C. B., her husband, touching her knowledge of the nature and effect of the application intended to be made by the within petition; and the Judge ascertained from her that she freely desired to make

[*Or, if she is not a petitioner, say:*] that she freely desired to consent to

such application.

R. M., Chief Clerk.

2333.
Summons to appoint a special examiner of a married woman, as to her consent (*p*).

Formal parts: see ante No. 881.

on the part of A. B., the wife of C. B., by X. Y., of [*residence and addition*], her next friend, that E. F., of [*residence and addition*], a solicitor of the Supreme Court (*q*), may be appointed to examine the said A. B., apart from the said C. B., her husband, touching her

(*n*) See Regul. 8 Aug. 1857, r. 22; Dan. Pr. 1853. On the hearing of the summons, such other evidence, if any, should be adduced, as the circumstances of the case may require, to show the propriety of the application, so far as the infant or lunatic is concerned; and the petition should be produced: *Ibid.*

(*o*) See 40 & 41 Vict. c. 18, ss. 50, 51, 52. The minute should be indorsed on the original petition, and signed by the Chief Clerk.

(*p*) See 40 & 41 Vict. c. 18, ss. 50—52.

(*q*) As to the person to be appointed, where the married woman is out of the jurisdiction, see 40 & 41 Vict. c. 18, s. 51.

knowledge of the nature and effect of the application intended to be made by the petition of [*Names of petitioners*], presented in this matter on the ——, 187—, under the provisions of the above mentioned Act, and to ascertain whether she freely desires to make such application.

[*Or, if the married woman is not a petitioner, say:*] and to ascertain whether she freely desires to consent to such application.

2334.

Motion paper for the like (*t*).

Formal parts: see ante No. 1570.

To move on behalf of A. B. [*Continue as in* No. 2333 *ante, to the end.*]

2335.

Affidavit in support of application to appoint a special examiner (*u*).

Formal parts: see ante No. 693.

1. I know and am well acquainted with E. F., of [*place of business*], one of the solicitors of the Supreme Court, and the person proposed to be appointed to examine A. B., the wife of C. B., apart from her husband, touching her knowledge [*&c: as in the summons*].

2. The said E. F. is not professionally concerned in the subject matter of the said petition, either for the petitioners, or any of them, or for any other of the parties interested in the object thereof.

3. I believe the said E. F. to be a fit and proper person to be appointed to examine the said A. B., for the purpose aforesaid.

A.

2336.

The examination (*x*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Title, as in order directing the examination.*]

The examination of A. B., the wife of C. B., in the order made in this matter dated the —— day of ——, 187— [*Order directing the examination*], respectively named: taken pursuant to the said order.

I, the said A. B., the wife of the said C. B., having been this

(*t*) See note to No. 2333 *ante*. The application is usually made by summons.

(*u*) Where the examination is to be taken out of the jurisdiction, the affidavit must be varied accordingly.

(*x*) See 40 & 41 Vict. c. 18, s. 51. The examination should be written on the first side of a sheet of foolscap; and the examiner's certificate (see *post* No. 2337) should follow thereunder.

day examined secretly and apart from my said husband, by E. F., in the said order named, touching my knowledge of the nature and effect of the application intended to be made to the High Court of Justice by the petition of G. H. and others, as in the said order mentioned, for answer thereto say: that I am aware of the nature and effect of the said intended application; and that I freely desire to make such application.

[*Or, if she is not a petitioner say:*] freely desire to consent to such application.

As witness my hand this —— day of ——, 187—.

A. B.

Witness to the signature of the said A. B.,
X. Y., of [*residence and addition*].

2337. Certificate of examination (*z*).

B.

To Her Majesty's High Court of Justice.

I, the undersigned E. F.: being the examiner named in the order dated the —— day of ——, 187—, above mentioned: humbly certify that, pursuant to the said order, I have this day examined the above-named A. B., the wife of the above-named C. D., secretly and apart from her said husband, touching her knowledge of the nature and effect of the application intended to be made by the petition of G. H. and others, as in the said order mentioned, and whether she freely desired to make such application,

[*Or, if she is not a petitioner, say:*] freely desired to consent to such application,

and I have taken such examination in writing, as above set forth.

I further certify that, at the time of such examination, I read over the said order to the said A. B., and explained to her the purport and effect thereof; and I was satisfied that she was aware of the nature and effect of the application intended to be made by the said petition, and that she freely desired to make the same.

[*Or, if she is not a petitioner, say:*] freely desired to consent to the same.

E. F.

Witness to the signature of the said E. F.,
X. Y.

(*z*) See Dan. Pr. 1855; and *ante* No. 2336, note (*x*).

2338. Affidavit verifying the signatures to the examination and certificate (*b*).

Formal parts : see ante No. 603.

1. On the —— day of ——, 187—, I saw A. B., the wife of C. B., in the order made in this matter dated the —— day of ——, 187— [*Order directing the examination*], respectively named, sign the paper writing, marked A., hereunto annexed, and purporting to be her examination taken pursuant to the said order (*c*).

2. On the said —— day of ——, I also saw E. F., the examiner named in the said order, sign the paper writing, marked B., hereunto annexed, and purporting to be his certificate of such examination.

3. The signature "——," set and subscribed to the said examination marked A., is of the proper handwriting of the said A. B.

4. The signature "——," set and subscribed to the said certificate marked B., is of the proper handwriting of the said E. F.

5. The signature "——," set and subscribed to the attestation at the foot of the said examination and certificate respectively, is of my proper handwriting.

2339. Memorandum of identity of examination and certificate (*d*).

[*The same as* No. 2078 *ante.*]

2340. Summons for direction as to service of notice on party not concurring or consenting (*e*).

Title as in petition : see ante No. 2321 *or* 2323 ; *other formal parts : see ante* No. 881.

on the part of the petitioner A. B., that notice of the application in this matter, which pursuant to section 26 of "The Settled Estates Act, 1877," is required to be served upon each of the following persons (that is to say), X. Y., C. D., as guardian of E. F., an infant, *&c.*, may be so served [*State how ; as thus :*] by being sent through the post office in a prepaid letter addressed to each of them, the said A. B., C. D., *&c.*, at his usual or last known place of abode.

(*b*) See Dan. Pr. 1855. The affidavit should be written on the third or fourth side of the sheet of paper containing the examination and certificate ; but it may be written on a separate sheet of paper. The examination, certificate, and affidavit are filed at the Record and Writ Clerks' office : whence an office copy of the three documents is procured for use : Dan. Pr. 1855.

(*c*) As to verifying the signature of the married woman, see Dan. Pr. 1855, note (*i*).

(*d*) See Dan. Pr. 1855. The memorandum should be written on the margin of the first page of the examination and certificate.

(*e*) See 40 & 41 Vict. c. 18, ss. 26, 30, 49.

2341.
Notice of the application (*f*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Set out the full title, as in the petition.*]

Take notice that on the —— day of ——, 187—, A. B. [*Set out the names, addresses, and descriptions of the petitioners, as in the petition*], presented their petition to Her Majesty's High Court of Justice, to be heard before his lordship the Master of the Rolls [*or as may be*], praying that [*Set out the substance of the prayer; as thus:*] the hereditaments above-mentioned may be sold by this Court under the provisions of the above-mentioned Act, and that all proper inquiries may be made, and directions given, for effecting such purpose; and that the costs of, and incident to, the said petition may be provided for.

And further take notice that you are hereby required within —— days next after the service of this notice upon you to notify to the said petitioners whether you assent to or dissent from the said application, or submit your rights and interests, so far as they may be affected by the said application, to be dealt with by the Court. And that in case no such notification shall be given by you in accordance with this notice, and within the time above-mentioned, you will be deemed to have submitted your rights and interests to be dealt with by the Court.

Any notification to be given to the said petitioners may be so given by being left at the offices of Mr. X. Y., situate at [*State where*].

Dated —— day of ——, 187—.

X. Y., of [*address*].
Solicitor for the petitioners.

To [*names and addresses of persons to whom the notice is given*].

2342.
Summons to dispense with notice (*g*).

Title as in petition: see ante No. 2321 *or* 2323; *other formal parts: see ante*, No. 881.

on the part of the petitioner A. B., that notice of the application in this matter, which pursuant to the 26th section of "The Settled Estates Act, 1877," is required to be served upon L. M., may be dispensed with. And that the said L. M. may be ordered to be deemed to have submitted his rights and interests to be dealt with by the Court.

(*f*) See 40 & 41 Vict. c. 18, s. 26.
(*g*) See 40 & 41 Vict. c. 18, s. 37.

2343. Notice for insertion in newspapers (*h*).

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Set out the full title as in the petition.*]

Pursuant to the above-mentioned Act of Parliament, Notice is hereby given that on the —— day of ——, 187—, A. B. [*Set out the names, addresses, and descriptions of the petitioners as in the petition*], presented their petition to Her Majesty's High Court of Justice, to be heard before his lordship the Master of the Rolls [*or as may be*], praying that [*Set out the substance of the prayer, as in* No. 2341 *ante*].

And notice is also hereby given that the petitioners may be served with any order of the Court, or of the Judge in Chambers, or with any notice relating to the subject matter of the said petition, at the offices of Mr. X. Y., situate at [*State where*].

Dated this —— day of ——, 187—.

X. Y., of [*address*],
Solicitor for the petitioners.

2344. Motion paper for leave to be heard on the application (*j*).

Formal parts: see ante No. 1570.

on the part of A. W., of [*residence and addition*], that he may be at liberty to appear, and be heard in opposition to [*Or*, in support of] the application intended to be made in this matter by the petition of A. B. and others, presented on the ——, 187—.

2345. Application to be furnished with a copy of the petition, in like case.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
[*Short title.*]

I request to be furnished with a copy of the petition of A. B. and others in this matter; and I undertake to pay all proper charges for the same.

Dated [*&c.: Conclude as in* No. 92 *ante*].

2346. Notice of the day appointed for hearing the petition.

This petition will be placed in the paper of petitions of his lordship the Master of the Rolls [*Or*, the Vice-Chancellor Sir ——], on ——, the —— day of ——, 187—.

(*h*) Notice of the application is not to be inserted in the newspapers, unless the Court shall so direct; 40 & 41 Vict. c. 18, s. 31.

(*j*) See 40 & 41 Vict. c. 18, s. 31.

2347.
Notice of motion to strike out condition requiring leases to be settled by the Court or Judge (*k*).

Title as in petition : see ante No. 2321 *or* 2323 ; *other formal parts : see ante* No. 1571.

on the part of [*Names of petitioners*], the petitioners named in the order made in this matter, dated the —— day of ——, 187—, that the said order may be altered and amended by striking out the words following ; that is to say : [*Here set out the words from the order*].

2348.
Petition for application of purchase money, or of money set aside out of rent (*l*).

[*Proceed as in* No. 2321 *or* 2323 *ante, down to* as follows ; *and continue thus :*]

1. [*State the order made on the petition so far as it authorised a sale or lease, and directed an investment of the purchase-money, or of the money set aside out of the rents, and the payment of the income thereof to the party entitled thereto.*]

2. [*State the completion of the sale or lease, and the payment of the purchase money, or part of the rent, into Court.*]

3. The said £A. [*purchase money, or part of rent, paid into Court*] is now represented by the sum of £B. Consolidated £3 per cent. annuities in Court to the credit of "Ex parte A. B.—In the matter of the Settled Estates Act, 1877."

4. 5. [*Same as pars.* 9, 10 *of* No. 2206 *ante.*]

Your petitioner therefore humbly prays as follows :

1. That [*Continue as in prayer of* No. 2206 *ante, to the end of par.* 4 *thereof*].

5. That it may be referred to the Taxing Master to tax your petitioner and the said [*Name any other parties entitled to their costs of the application*] their costs (*m*) of this application, including therein the charges and expenses of and incident to the said investment in the purchase of the said hereditaments, and of all proceedings relating thereto ; and that the amount of such costs, when taxed, may be raised by a sale of a competent portion of the residue of the said £B. Consolidated £3 per cent. annuities after the aforesaid sale thereout.

6. That the rents and profits of the said heredita-

(*k*) See 40 & 41 Vict. c. 18, s. 15.

(*l*) As to the application of purchase money received on a sale, or of money set aside out of rent reserved on a lease, authorised under the act, see 40 & 41 Vict. c. 18, ss. 34, 35, 37.

(*m*) See 40 & 41 Vict. c. 18, s. 41.

ments after the purchase thereof, and the dividends as they accrue on the residue of the said £B. Consolidated £3 per cent. annuities after the sales thereout hereinbefore mentioned during the life of your petitioner, may be paid to your petitioner A. B. until further order.

Or that [*Conclude as in* No. 1578 *ante, and add foot note,* No. 1579].

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